

## HARRIET B. MACOMB, ADMINISTRATRIX OF GENERAL ALEXANDER MACOMB, DECEASED.

FEBRUARY 11, 1860.—Reported from the Court of Claims; committed to a Committee of the Whole House, and ordered to be printed.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

The Court of Claims respectfully presents the following documents as the report in the case of Harriet B. Macomb, administratrix of General Alexander Macomb, deceased, *vs.* The United States:

1. The petition of the claimant.
2. Documents filed as evidence, transmitted to House of Representatives.
3. Claimant's brief.
4. United States Solicitor's brief.
5. Opinion of the Court, adverse to the claim, delivered by Blackford, J.
6. Separate opinion by Judge Loring, concurring.

By order of the Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this 5th day of December, A. D. 1859.

[L. s.]

SAML. H. HUNTINGTON,  
*Chief Clerk Court of Claims.*

*To the honorable Judges of the United States Court of Claims:*

The petition of Harriet B. Macomb, widow and sole executrix of General Alexander Macomb, deceased; Alexander S. Macomb, William H. Macomb, John Mason, and Catharine, his wife; Henry Stanton, and Alexandrine, his wife; John Macomb, jr.; Sarah Stanton, Morris S. Miller, and Jane Octavia, his wife, respectfully shows that your petitioners, excepting said Harriet B. Macomb, Henry Stanton, John Mason, and Morris S. Miller, are the sole heirs at law and distributees of General Alexander Macomb, late commanding general of the army of the United States.

They further show that upon the reduction of the army in 1821 General Macomb was retained with the rank of colonel and the brevet rank of major general; that in May, 1821, he was assigned to the command of the corps of engineers, the topographical engineers, the Military Academy, and a large force of civil engineers, artisans, and laborers employed upon different military works, and held and exercised this command from June 1, 1821, to May 23, 1828; that his

said command consisted of four distinct corps, and numbered nearly five thousand men ; that while the proper command of a major general is a division, consisting of four regiments, it is the rational and has long been the settled construction, and is in accordance with the precedents, that in case of staff and engineer officers it is not necessary that their command should be composed of troops organized into regiments and companies to entitle them to the pay and emoluments of the brevet rank ; that both in number of corps, in numerical force, and the extent of territory embraced by it, the command of General Macomb equalled that of a major general, and equalled, if it did not exceed, that of any officer who actually exercised the command and received the pay of major general at that time ; that under the act of Congress of April 16, 1818, entitled " An act regulating the pay and emoluments of brevet officers," (section 1,) General Macomb was entitled to the full pay of major general for the period of his aforesaid command ; that although the senior of others who received the same brevet rank, and exercising a command equal, if not superior, to theirs in importance, numbers, and extent of territory, General Macomb was the only officer who received the rank of brevet major general for services in the war of 1812 who did not also receive the pay and emoluments of that rank.

They further show that in 1827 General Macomb presented to the Secretary of War a claim for the difference between the pay of brigadier general, which had been allowed to him, and that of major general, from the date of his appointment to his aforesaid command ; that failing to get the claim allowed by the Secretary of War or Comptroller of the Treasury, he applied to Congress at the second session of the twenty-second Congress ; that in 1834, by a resolution of the House of Representatives, it was referred to the Secretary of War, who was proceeding to act upon it when the President directed all accounts of the kind to be referred to Congress ; that at the second session of the twenty-fifth Congress said claim was passed in the House of Representatives and rejected in the Senate ; that General Macomb continued to urge it upon the War Department, without success, until his death.

They further show that no part of the claim has been assigned.

They state the claim as follows, viz :

|  |             |
|--|-------------|
| For difference between pay of brigadier and that of major general, from June 1, 1821, to May 23, 1828..... | \$13,573 17 |
| Interest .....   |             |

JOHNSON & COX, *Attorneys.*

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WAR DEPARTMENT, *September 29, 1836.*

I have examined the claim of General Macomb, presented for the difference in pay between a major general and brigadier general, as herein set forth.

I do not feel myself at liberty to act on this subject, in consequence of the general direction of the President concerning the examination of accounts of this nature.

General Macomb's claim certainly presents a very strong feature, when the decision of this department is taken into view in other cases, establishing the principle that a command entitling to brevet pay and allowances may be composed of persons not soldiers employed in the public service, and under the general direction of the head of a bureau, and more especially when taking into consideration the fact that General Macomb was, by the order of the President issued 17th of May, 1821, assigned to the command of the Engineer department in his capacity of major general by brevet, and by no other rank, as well as the extent of his command, it appears to me that his claim is equitable.

LEWIS CASS.

A.

DR.

*The United States to Major General Alexander Macomb.*

| On what account.                                    | Commencement and expiration. |              | Term of service charged. |       | Pay per month. | Number of days. | Number of rations per day. | Total number of rations. | Post or place where due. | Price of rations. | Amount.    |
|---|------------------------------|--------------|--------------------------|-------|----------------|-----------------|----------------------------|--------------------------|--------------------------|-------------------|------------|
|   | From—                        | To—          | Months                   | Days. |                |                 |                            |                          |                          |                   |            |
| Pay for myself .....                                | June 1, 1821                 | May 23, 1828 | 83                       | 23    | \$96 00        | .....           | .....                      | .....                    | .....                    | .....             | \$8,039 07 |
| Pay for one private servant, not soldier .....      | .....do.....                 | .....do..... | 83                       | 23    | 5 00           | .....           | .....                      | .....                    | .....                    | .....             | 417 71     |
| Forage for two horses .....                         | .....do.....                 | .....do..... | 83                       | 23    | 16 00          | .....           | .....                      | .....                    | .....                    | .....             | 1,339 85   |
| Clothing for one private servant, not soldier ..... | .....do.....                 | .....do..... | 83                       | 23    | 2 50           | .....           | .....                      | .....                    | .....                    | .....             | 209 34     |
| Subsistence for myself .....                        | .....do.....                 | .....do..... | .....                    | ..... | .....          | 2,548           | 6                          | 15,288                   | Washington City...       | \$0 20            | 3,057 60   |
| Subsistence for one private servant, not soldier... | .....do.....                 | .....do..... | .....                    | ..... | .....          | 2,548           | 1                          | 2,548                    | .....do.....             | 20                | 509 60     |
|   |                              |              |                          |       |                |                 |                            |                          |                          |                   | 13,573 17  |

This account is for the difference of pay between that of a brigadier general and major general by brevet. On the organization of the peace establishment of 1821, the President issued a general order, dated May 17, 1821, arranging the troops and organizing the *commands*, in which arrangement I was assigned to the command of the Engineer department as major general, but received only the pay of a brigadier general. My command consisted of the Corps of Engineers, the Corps of Topographical Engineers, the Military Academy, including the Corps of Cadets and the Civil Engineers, making a numerical force equal to the whole army. This especial assignment of the President to the command of the Engineer department, in my capacity of major general, and in no other capacity, as will appear by reference to general order of May 17, 1821, and the amount of the command, is deemed a full title to my pay as major general.

A. MACOMB, *Major General.*

HARRIET B. MACOMB.



## B.

ADJUTANT AND INSPECTOR GENERAL'S OFFICE, *May 17, 1821.*

## GENERAL ORDERS.

In pursuance of the act of Congress, entitled "An act to reduce and fix the military peace establishment of the United States," passed the 2d of March, 1821, the President has directed that the following list of officers, the following organization of regiments and *commands*, with the following distribution of the troops, shall constitute the peace establishment of the United States from and after the 1st of June next.

## ARMY LIST.

| Names and rank.  | Date of appointment. | Brevet and former commissions.                            | Remarks.           |
|--|----------------------|---|--------------------|
| Jacob Brown, major general.....  | Jan. 24, 1814        | -----   | Washington.....    |
| Edmund P. Gaines, brig. general.   | March 9, 1814        | August 15, 1814,<br>major general<br>by brevet.           | -----              |
| Winfield Scott.....do.....   | March 9, 1814        | July 25, 1814,<br>major general<br>by brevet.             | -----              |
| Thos. S. Jesup, brigadier general<br>and quartermaster general.....                      | May 8, 1818          | -----   | Washington.....    |
| James Gadsden, colonel and ad-<br>jutant general.....                                    | -----                | -----   | Washington.....    |
| John E. Wool, inspector general.   | April 29, 1816       | Colonel.....  | -----              |
| James Gadsden.....do.....  | Oct. 1, 1820         | do.....   | -----              |
| William Linnard, quartermaster.  | May 12, 1813         | Major.....  | -----              |
| Henry Stanton, quartermaster....   | May 13, 1820         | do.....   | -----              |
| [For assistant quartermasters,<br>see officers of the line.]                             |                      |   |                    |
| Peter Fayssoux, storekeeper quar-<br>termaster's department.....                         | -----                | -----   | St. Louis.....     |
| Samuel Perkins, storekeeper quar-<br>termaster's department.....                         | -----                | -----   | Detroit.....       |
| John D. Orr, storekeeper quarter-<br>master's department.....                            | -----                | -----   | New Orleans.....   |
| H. A. Fay, storekeeper quartermas-<br>ter's department, provi-<br>sionally retained..... | -----                | -----   | Albany.....        |
| SUBSISTENCE DEPARTMENT.  |                      |   |                    |
| Colonel George Gibson, commis-<br>sary general of subsistence.....                       | April 18, 1818       | Colonel of staff,<br>April 29, 1816.                      | Washington.....    |
| [For assistant commissaries of<br>subsistence see the subalterns of<br>the line.]        |                      |   |                    |
| PURCHASING DEPARTMENT.   |                      |   |                    |
| Callender Irvine, commissary of<br>purchases.....  | Aug. 8, 1812         | -----   | Philadelphia.....  |
| Archibald Steele, storekeeper....  | -----                | -----   | do.....            |
| PAY DEPARTMENT.  |                      |   |                    |
| D. Parker, paymaster general....   | June 1, 1821         | Brigadier general<br>of staff, Novem-<br>ber 22, 1814.... | Office, Washington |

## B—Continued.

| Names and rank.                   | Date of appointment. | Brevet and former commissions. | Remarks.                |
|-----------------------------------|----------------------|--------------------------------|-------------------------|
| Thomas Wright, paymaster.....     | June 22, 1815        | Captain.....                   | Pensacola.....          |
| Asher Phillips.....do.....        | Aug. 26, 1815        | do.....                        | Third infantry.....     |
| Alphonso Whetmore.....do.....     | Oct. 14, 1815        | do.....                        | Sixth infantry.....     |
| Ben. F. Larned.....do.....        | Nov. 24, 1815        | do.....                        | Seventh infantry..      |
| Satterlee Clark.....do.....       | April 29, 1816       | Major.....                     | Utica, New York..       |
| Joseph Woodruff.....do.....       | do.....              | do.....                        | Charleston, S. C..      |
| David Gwynn.....do.....           | do.....              | do.....                        | Detroit, Mich. Ter.     |
| David S. Townsend.....do.....     | do.....              | do.....                        | Boston, Mass.....       |
| Jacob W. Albright.....do.....     | July 9, 1816         | Captain.....                   | Philadelphia.....       |
| Charles B. Tallmadge.....do.....  | March 27, 1818       | do.....                        | New York.....           |
| Daniel Randall.....do.....        | July 21, 1818        | do.....                        | Baton Rouge.....        |
| Charles H. Smith.....do.....      | Nov. 24, 1819        | do.....                        | Norfolk, Virginia..     |
| Thomas Biddle.....do.....         | Aug. 24, 1820        | Major.....                     | St. Louis.....          |
| A. A. Massias.....do.....         | Dec. 12, 1820        | do.....                        | St. Augustine.....      |
| MEDICAL DEPARTMENT.               |                      |                                |                         |
| Joseph Lovell, surgeon general..  | April 18, 1818       | do.....                        | Washington.....         |
| Thomas Lawson.....surgeon..       | May 21, 1813         | do.....                        | Seventh infantry..      |
| Thomas G. Mower.....do.....       | June 30, 1814        | do.....                        | Green Bay.....          |
| B. F. Harney.....do.....          | Aug. 17, 1814        | do.....                        | Baton Rouge.....        |
| W. V. Wheaton.....do.....         | Sept. 4, 1816        | do.....                        | Sackett's Harbor..      |
| W. S. Madison.....do.....         | Oct. 5, 1816         | do.....                        | Dead.....               |
| M. H. Elliott.....do.....         | Oct. 31, 1817        | do.....                        | Pensacola.....          |
| John Gale.....do.....             | April 18, 1818       | do.....                        | Council Bluffs....      |
| Josiah Everett.....do.....        | Jan. 28, 1820        | do.....                        | Fort Columbus....       |
| Edward Purcell.....do.....        | June 18, 1821        | do.....                        | St. Peters.....         |
| Geo. W. Maupin, assistant surgeon | Nov. 5, 1802         | do.....                        | Fort Nelson, Va....     |
| Joseph Goodhue.....do.....        | Feb. 8, 1803         | do.....                        | Fort Constitution..     |
| James H. Sargeant.....do.....     | March 6, 1806        | do.....                        | Fort Sullivan.....      |
| Sylvester Day.....do.....         | Dec. 9, 1807         | do.....                        | Pittsburg Arsenal..     |
| William Ballard.....do.....       | March 24, 1812       | do.....                        | Fort Niagara.....       |
| William Turner.....do.....        | Sept. 29, 1812       | do.....                        | Fort Wolcott.....       |
| Hanson Catlett.....do.....        | Feb. 18, 1813        | do.....                        | Fort Washington..       |
| Foster Swift.....do.....          | Feb. 18, 1814        | do.....                        | Fort Trumbull.....      |
| John Trevitt.....do.....          | April 8, 1814        | do.....                        | Died Aug. 18, 1821.     |
| William N. Mercer.....do.....     | Nov. 22, 1814        | do.....                        | Resig'd July 1, 1821.   |
| T. I. C. Monroe.....do.....       | April 29, 1816       | do.....                        | Arsenal, Richmond.      |
| Samuel B. Smith.....do.....       | Nov. 12, 1816        | do.....                        | Fort Mifflin.....       |
| James Mann.....do.....            | April 18, 1818       | do.....                        | Boston harbor.....      |
| J. Wallace.....do.....            | do.....              | do.....                        | Annapolis.....          |
| William Stewart.....do.....       | do.....              | do.....                        | Fort McHenry.....       |
| Joseph Eaton.....do.....          | do.....              | do.....                        | Fort Preble.....        |
| B. Delavan.....do.....            | do.....              | do.....                        | Detroit.....            |
| Robert Archer.....do.....         | do.....              | do.....                        | Fort Norfolk.....       |
| George C. Clitherall.....do.....  | do.....              | do.....                        | Fort Johnson, N. C.     |
| Squire Lea.....do.....            | May 15, 1818         | do.....                        | Fort St. Philip....     |
| Joseph P. Russell.....do.....     | Aug. 10, 1818        | do.....                        | Fort Jackson, Sav'h.    |
| Richard Weightman.....do.....     | Aug. 21, 1818        | do.....                        | Amelia.....             |
| W. H. Livingston.....do.....      | Feb. 3, 1819         | do.....                        | Arsenal, Watervlelt.    |
| I. P. C. Macmahon.....do.....     | July 23, 1819        | do.....                        | Charleston harbor.      |
| William Beaumont.....do.....      | Dec. 4, 1819         | do.....                        | Mackinac.....           |
| Egbert H. Bell.....do.....        | Jan. 28, 1820        | do.....                        | Resigned July 16, 1821. |
| William H. Nicoll.....do.....     | do.....              | do.....                        | Council Bluffs....      |
| Robert French.....do.....         | April 12, 1820       | do.....                        | Belle Fontaine.....     |
| Chas. N. M'Coskry.....do.....     | do.....              | do.....                        | Dead.....               |
| James Cutbush.....do.....         | May 16, 1820         | do.....                        | West Point.....         |

## B—Continued.

| Names and rank.                       | Date of appointment. | Brevet and former commissions.                  | Remarks.                  |
|---------------------------------------|----------------------|---|---------------------------|
| Wm. S. Comstock, ass't surgeon        | Oct. 12, 1820        | -----   | New York -----            |
| Richard Randall.....do.....           | -----do-----         | -----   | Charleston harbor. -----  |
| George B. M'Knight.....do.....        | Oct. 13, 1830        | -----   | Fort Smith -----          |
| Lyman Foot.....do.....                | Dec. 12, 1820        | -----   | Plattsburg -----          |
| Thomas P. Hall.....do.....            | -----do-----         | -----   | Chicago -----             |
| S. H. Littlejohn.....do.....          | June 1, 1821         | -----   | Sackett's Harbor... ----- |
| C. A. Finley.....do.....              | -----do-----         | -----   | With the 7th inf'y. ----- |
| Chas. Mendenhall.....do.....          | -----do-----         | -----   | Prairie du Chien -----    |
| R. M. Coleman.....do.....             | -----do-----         | -----   | With the 7th inf'y. ----- |
| Benjamin King.....do.....             | -----do-----         | -----   | Baton Rouge -----         |
| A. P. Merrill.....do.....             | -----do-----         | -----   | Pensacola -----           |
| H. F. Hall.....do.....                | -----do-----         | -----   | Green Bay -----           |
| Prestley H. Craig.....do.....         | -----do-----         | -----   | Fort Armstrong -----      |
| Charles Sloan.....do.....             | -----do-----         | -----   | Baton Rouge -----         |
| John Jackson.....do.....              | -----do-----         | -----   | Pensacola -----           |
| John A. Brearton.....do.....          | July 1, 1821         | -----   | Washington -----          |
| Henry Stevenson.....do.....           | July 16, 1821        | -----   | St. Marks -----           |
| Mordica Hall.....do.....              | Oct. 28, 1821        | -----   | -----                     |
| ENGINEER DEPARTMENT.                  |                      |   |                           |
| <i>Corps of Engineers.</i>            |                      |   |                           |
| Alexander Macomb, chief engineer..... | June 1, 1821         | Major general by brevet, September 11, 1814.... | Headquarters, Washington. |
| Simon Bernard, assistant engineer     | Nov. 16, 1816        | Brigadier general by brevet.                    |                           |
| Chas. Gratiot, lieutenant colonel.    | March 31, 1819       | -----   | -----                     |
| J. G. Totten.....major.....           | Nov. 12, 1818        | Lieut. colonel by brevet, September 11, 1814.   | -----                     |
| Sam. Babcock.....do.....              | March 31, 1819       | -----   | -----                     |
| Sylv. Thayer.....captain.....         | Oct. 13, 1813        | Major by brevet, Feb'y 20, 1815.                | -----                     |
| R. E. De Russey.....do.....           | Feb. 9, 1815         | Brevet, September 11, 1814.                     | -----                     |
| Fred. Lewis.....do.....               | Oct. 1, 1817         | -----   | -----                     |
| T. W. Maurice.....do.....             | Nov. 12, 1818        | -----   | -----                     |
| Hipol. Dumas.....do.....              | March 31, 1819       | -----   | -----                     |
| John L. Smith.....do.....             | Aug. 29, 1820        | -----   | -----                     |
| Hor. C. Story.....1st lieutenant.     | April 15, 1818       | Brevet, September 17, 1814.                     | -----                     |
| George Blaney.....do.....             | Nov. 12, 1818        | -----   | -----                     |
| Thos. I. Leslie.....do.....           | March 31, 1819       | -----   | Paymaster, Washington.    |
| Wm. H. Chase.....do.....              | -----do-----         | -----   | -----                     |
| Rd. Delafield.....do.....             | Aug. 29, 1820        | -----   | -----                     |
| Andrew Talcott.....do.....            | Oct. 10, 1820        | -----   | -----                     |
| Wm. A. Eliason.....2d lieutenant.     | July 1, 1819         | -----   | -----                     |
| Fred'k A. Underhill.....do.....       | -----do-----         | -----   | -----                     |
| Cornelius A. Ogden.....do.....        | -----do-----         | -----   | -----                     |
| Henry Brewerton.....do.....           | -----do-----         | -----   | -----                     |
| Stephen Tuttle.....do.....            | Aug. 29, 1820        | Brevet, July 1, 1820.                           | -----                     |
| And. J. Donelson.....do.....          | Oct. 1, 1820         | Brevet, July 1, 1820.                           | -----                     |

## B—Continued.

| Names and rank.                           | Date of appointment. | Brevet and former commissions. | Remarks. |
|---|----------------------|--------------------------------|----------|
| <i>Topographical Engineers.</i>           |                      |                                |          |
| John Anderson.....major..                 | April 12, 1813       | -----                          | -----    |
| Isaac Roberdeau.....do....                | April 29, 1813       | -----                          | -----    |
| John J. Abert.....do....                  | Nov. 22, 1814        | -----                          | -----    |
| Jas. Kearney.....do....                   | April 29, 1816       | -----                          | -----    |
| Stephen H. Long.....do....                | do.....              | -----                          | -----    |
| P. H. Perrault.....do....                 | Feb. 17, 1817        | -----                          | -----    |
| <i>Assistant Topographical Engineers.</i> |                      |                                |          |
| Hugh Young.....captain.                   | Feb. 19, 1817        | -----                          | -----    |
| William Tell Poussin.....do....           | March 6, 1817        | -----                          | -----    |
| John Le Conte.....do....                  | April 18, 1818       | -----                          | -----    |
| Hartman Bache.....do....                  | July 24, 1818        | -----                          | -----    |

## B—Continued.

| Names and rank.                     | Date of appointment. | Brevets and former commissions and batt. |
|-------------------------------------|----------------------|--|
| <b>FIRST REGIMENT OF ARTILLERY.</b> |                      |  |
| <i>Colonel.</i>                     |                      |  |
| Moses Porter.....                   | Mar. 12, 1812        | Brig. gen. bvt., Sept. 10, 1813.         |
| <i>Lieutenant Colonel.</i>          |                      |  |
| G. Bomford.....                     | Feb. 9, 1815         | Bvt., Dec. 22, 1814, ordnance.           |
| <i>Major.</i>                       |                      |  |
| John B. Walbach.....                | April 25, 1818       | Lt. col. bvt., May 1, 1815.              |
| <i>Captains.</i>                    |                      |  |
| A. McDowell.....                    | April 1, 1812        |  |
| J. B. Crane.....                    | July 6, 1812         | Maj. bvt., Nov. 13, 1813.                |
| A. S. Brooks.....                   | .....do.....         | Maj. bvt., Sept. 11, 1814.               |
| J. L. Eastman.....                  | July 31, 1813        |  |
| James Dalliba.....                  | Aug. 5, 1813         | Maj. bvt., Feb. 9, 1815, ordnance.       |
| S. Churchill.....                   | Aug. 15, 1813        |  |
| W. J. Worth.....                    | Aug. 19, 1814        | Maj. bvt., July 25, 1814.                |
| Milo Mason.....                     | May 17, 1816         |  |
| Henry Whiting.....                  | Mar. 3, 1817         | Bvt., March 17, 1814, a. q. m.           |
| F. Whiting.....                     | Sept. 10, 1819       |  |
| <i>First Lieutenants.</i>           |                      |  |
| N. Baden.....                       | Aug. 6, 1813         |  |
| H. Saunders.....                    | July 14, 1814        | A. C. S.                                 |
| P. Melondy.....                     | Oct. 24, 1817        |  |
| R. M. Kirby.....                    | Mar. 23, 1818        | Maj. staff, April 29, 1816.              |
| J. A. Dix.....                      | .....do.....         | Aid to General Brown.                    |
| G. W. Gardiner.....                 | April 20, 1818       | A. C. S.                                 |
| C. S. Merchant.....                 | .....do.....         | A. C. S.                                 |
| N. G. Dana.....                     | .....do.....         | A. C. S.                                 |
| J. S. Abeel.....                    | .....do.....         | Bvt., Oct. 10, 1814.                     |
| W. T. Willard.....                  | .....do.....         |  |
| Henry W. Griswold.....              | Dec. 11, 1818        |  |
| B. C. Brent.....                    | Mar. 5, 1819         |  |
| W. Smith.....                       | June 5, 1819         | A. C. S.                                 |
| C. Despenville.....                 | Sept. 10, 1819       |  |
| John C. Kirk.....                   | Sept. 30, 1819       |  |
| J. Simonson.....                    | Oct. 10, 1819        |  |
| M. A. Patrick.....                  | Aug. 11, 1820        | A. C. S.                                 |
| S. S. Smith.....                    | Nov. 30, 1820        |  |
| <i>Second Lieutenants.</i>          |                      |  |
| Samuel Cooper.....                  | Nov. 15, 1817        | Bvt., Dec. 11, 1815.                     |
| Andrew McIntyre.....                | Feb. 13, 1818        | A. C. S.                                 |
| H. Brown.....                       | July 24, 1818        |  |
| Giles Porter.....                   | .....do.....         |  |
| George Webb.....                    | .....do.....         |  |
| W. B. Davidson.....                 | Sept. 1, 1818        |  |
| J. Howard.....                      | .....do.....         |  |

## B—Continued.

| Names and rank.               | Date of appointment. | Brevets and former commissions and batt. |
|-------------------------------|----------------------|--|
| C. Wharton .....              | Oct. 28, 1818        |  |
| D. Van Ness .....             | Mar. 3, 1819         |  |
| Ben. Vining .....             | July 1, 1819         |  |
| Z. J. D. Kinsley .....        | do.                  |  |
| Justin Dimick .....           | do.                  |  |
| G. W. Whistler .....          | do.                  |  |
| J. Tyler .....                | do.                  |  |
| W. H. Swift .....             | do.                  |  |
| A. Pickevin .....             | Aug. 13, 1819        |  |
| Ben. Walker .....             | Dec. 31, 1819        |  |
| G. D. Ramsay .....            | July 1, 1820         |  |
| Wm. T. W. Tone .....          | July 12, 1820        |  |
| SECOND REGIMENT OF ARTILLERY. |                      |  |
| <i>Colonel.</i>               |                      |  |
| N. Towson .....               | June 1, 1821         |  |
| <i>Lieutenant Colonel.</i>    |                      |  |
| James House .....             | Mar. 3, 1813         |  |
| <i>Major.</i>                 |                      |  |
| Jacob Hindman .....           | June 26, 1813        | Col. bvt., May 17, 1815.                 |
| <i>Captains.</i>              |                      |  |
| Wm. Gates .....               | Mar. 3, 1813         |  |
| A. C. W. Fanning .....        | Mar. 13, 1813        | Maj. bvt., Aug. 15, 1814.                |
| I. Roach, jr. ....            | April 13, 1813       |  |
| J. F. Helleman .....          | May 5, 1813          |  |
| George Talcott .....          | Aug. 5, 1813         | Ordinance.                               |
| Charles J. Nourse .....       | June 17, 1816        | Maj. staff, Sept. 14, 1814.              |
| Frs. S. Belton .....          | July 31, 1817        | Maj. staff, Oct. 18, 1814.               |
| Rd. A. Zantzinger .....       | Dec. 12, 1818        | Bvt., Aug. 15, 1814.                     |
| J. Mountfort .....            | Aug. 11, 1819        | Bvt., Sept. 11, 1814.                    |
| Thomas C. Legate .....        | May 13, 1820         |  |
| <i>First Lieutenants.</i>     |                      |  |
| David T. Welch .....          | April 13, 1830       | Capt. bvt., June 20, 1814.               |
| Elijah Lyon .....             | Jan. 1, 1817         | A. C. S.                                 |
| E. Kirby .....                | May 1, 1817          | Aid to General Brown.                    |
| J. W. Thompson .....          | May 21, 1817         |  |
| Richard Bache .....           | June 15, 1817        | Bvt., Apr. 17, 1813, a. c. s.            |
| Lewis G. De Russey .....      | April 20, 1818       |  |
| Charles Mellon .....          | do.                  | A. C. S.                                 |
| John S. Pierce .....          | do.                  |  |
| Allen Lowd .....              | do.                  | A. C. S.                                 |
| G. S. Wilkins .....           | do.                  |  |
| Timothy Green .....           | do.                  | A. C. S.                                 |
| H. W. Fitzhugh .....          | do.                  | A. C. S.                                 |
| J. J. Davis .....             | do.                  |  |
| Robert L. Armstrong .....     | July 2, 1818         |  |
| Patrick H. Galt .....         | Sept. 26, 1818       |  |
| H. S. Mallory .....           | May 31, 1819         |  |



## B—Continued.

| Names and rank.                                | Date of appointment. | Brevets and former commissions and batt.                   |
|--|----------------------|--|
| W. Wells .....                                 | Aug. 28, 1819        | A. C. S.   |
| C. M. Eakin .....                              | May 13, 1820         | A. C. S.   |
| <i>Second Lieutenants.</i>                     |                      |  |
| W. E. Williams .....                           | June 30, 1818        |  |
| Samuel Ringgold .....                          | July 24, 1818        |  |
| Ed. Harding .....                              | do                   |  |
| Joseph Strong .....                            | do                   |  |
| James Green .....                              | Sept. 11, 1818       | A. Q. M.   |
| Abm. C. Fowler .....                           | Mar. 3, 1819         |  |
| Martin Thomas .....                            | Mar. 31, 1819        |  |
| Jacob A. Dumest .....                          | July 1, 1819         |  |
| Henry Gilbert .....                            | do                   |  |
| Lemuel Gates .....                             | Aug. 13, 1819        |  |
| Thomas P. Ridgeley .....                       | do                   |  |
| James W. Webb .....                            | do                   |  |
| John R. Bowes .....                            | Oct. 10, 1819        |  |
| James A. Chambers .....                        | July 1, 1820         |  |
| W. C. De Hart .....                            | do                   |  |
| Daniel D. Tompkins .....                       | do                   |  |
| William P. Buchanan .....                      | do                   |  |
| Joshua Barney .....                            | do                   |  |
| Jno. M. Swift .....                            | do                   |  |
| THIRD REGIMENT OF ARTILLERY.                   |                      |  |
| <i>Colonel.</i>                                |                      |  |
| Walker K. Armistead .....                      | Nov. 12, 1818        |  |
| <i>Lieutenant Colonel.</i>                     |                      |  |
| G. E. Mitchell, (resigned June 31, 1821) ..... | Mar. 3, 1813         | Col. bvt., May 5, 1814.                                    |
| W. Lindsay .....                               |                      |  |
| <i>Major.</i>                                  |                      |  |
| James Bankhead .....                           | Aug. 15, 1813        |  |
| <i>Captains.</i>                               |                      |  |
| William Wilson .....                           | May 3, 1808          | Maj. bvt., May 3, 1818.                                    |
| Roger Jones .....                              | July 6, 1812         | Lt. col. bvt., Sept. 17, '14,<br>col. staff, Aug. 10, '18. |
| S. B. Archer .....                             | do                   | April 27, 1813, ordnance.                                  |
| Thomas Stockton .....                          | Sept. 10, 1812       | April 15, 1814.  |
| Henry K. Craig .....                           | Dec. 23, 1813        |  |
| William Laval .....                            | Feb. 15, 1814        | Maj. bvt., Nov. 7, 1814.                                   |
| Mann P. Lomax .....                            | Nov. 17, 1814        |  |
| George N. Morris .....                         | Jan. 15, 1817        |  |
| Rufus L. Baker .....                           | May 21, 1817         |  |
| Felix Ansart .....                             | Nov. 28, 1819        |  |
| <i>First Lieutenants.</i>                      |                      |  |
| S. Spotts .....                                | May 22, 1814         | Capt. bvt., Jan. 8, 1815,<br>a. c. s.                      |
| Æneas Mackay .....                             | Dec. 1, 1816         | Bvt., March 12, 1813.                                      |
| Joseph P. Taylor .....                         | Nov. 24, 1817        | A. c. s. bvt., July 15, 1814.                              |

## B—Continued.

| Names and rank.               | Date of appointment. | Brevets and former commissions and batt. |
|-------------------------------|----------------------|--|
| I. L. Gardner.....            | April 20, 1818       | A. Q. M.                                 |
| Thomas Childs.....            | do.....              | A. C. S.                                 |
| C. M. Thruston.....           | do.....              |  |
| W. L. Booth.....              | April 25, 1818       |  |
| Thomas J. Baird.....          | June 2, 1818         | A. C. S.                                 |
| Upton S. Frazer.....          | Oct. 20, 1818        | A. C. S.                                 |
| Thomas W. Lendrum.....        | May 30, 1819         | A. C. S.                                 |
| James Spencer.....            | June 26, 1819        |  |
| I. A. Adams.....              | July 31, 1819        |  |
| J. W. Phillips.....           | Aug. 4, 1819         |  |
| Henry F. Evans.....           | Aug. 8, 1819         |  |
| J. A. Webber.....             | Oct. 31, 1819        | A. C. S.                                 |
| R. B. Lee.....                | do.....              |  |
| F. L. Griffith.....           | Nov. 28, 1819        |  |
| John Hills.....               | Dec. 31, 1819        |  |
| <i>Second Lieutenants.</i>    |                      |  |
| Samuel McKenzie.....          | July 24, 1818        |  |
| George W. Corprew.....        | do.....              |  |
| William S. Newton.....        | do.....              |  |
| Joseph Hopkins.....           | Mar. 3, 1819         |  |
| I. F. Hamtramck.....          | July 1, 1819         |  |
| John L'Engle.....             | do.....              |  |
| J. M. Edwards.....            | do.....              |  |
| A. Brockenbrough.....         | do.....              |  |
| L. A. Rigail.....             | Aug. 4, 1819         |  |
| John Smith.....               | Aug. 13, 1819        |  |
| Alexander Stewart.....        | Dec. 4, 1819         | A. C. S.                                 |
| H. Garner.....                | Jan. 28, 1820        |  |
| Thomas E. Sudler.....         | July 1, 1820         |  |
| William H. Bell.....          | do.....              |  |
| Francis N. Barbarin.....      | do.....              |  |
| H. J. Feltus.....             | do.....              |  |
| Rawlins Lowndes.....          | do.....              |  |
| W. H. Kerr.....               | Oct. 27, 1820        |  |
| FOURTH REGIMENT OF ARTILLERY. |                      |  |
| <i>Colonel.</i>               |                      |  |
| John R. Fenwick.....          | June 1, 1821         | Bvt., March 18, 1813.                    |
| <i>Lieutenant Colonel.</i>    |                      |  |
| William Macrea.....           | April 19, 1814       | Bvt., July 10, 1812.                     |
| <i>Major.</i>                 |                      |  |
| Abram Eustis.....             | Mar. 15, 1810        | Lt. col. bvt., Sept. 10, 1813.           |
| <i>Captains.</i>              |                      |  |
| E. Humphreys.....             | Jan. 9, 1809         | Maj. bvt., Dec. 28, 1814.                |
| John A. Burd.....             | July 6, 1812         | Maj. bvt., Oct. 31, 1814.                |
| B. K. Pierce.....             | Oct. 1, 1813         |  |
| M. M. Payne.....              | Mar. 2, 1814         |  |
| John R. Bell.....             | Oct. 10, 1814        |  |
| Jer. D. Hayden.....           | Feb. 9, 1815         | Bvt., March 13, 1813.                    |

## B—Continued.

| Names and rank.                        | Date of appointment. | Brevets and former commissions and batt. |
|--|----------------------|--|
| William Wade.....                      | Feb. 9, 1815         | Ordnance.                                |
| William F. Hobart.....                 | Jan. 1, 1817         |  |
| John Erving.....                       | April 25, 1818       |  |
| Abm. L. Sands.....                     | Sept. 17, 1818       |  |
| <i>First Lieutenants.</i>              |                      |  |
| L. Whiting.....                        | June 14, 1814        | A. C. S.                                 |
| Sl. Washburn.....                      | Jan. 15, 1817        |  |
| M. S. Massey.....                      | Aug. 5, 1817         |  |
| William L. McClintock.....             | Sept. 29, 1817       | A. C. S.                                 |
| G. S. Drane.....                       | Nov. 15, 1817        | Bvt., 25 July, 1814.                     |
| John Monroe.....                       | April 20, 1818       |  |
| Jac. Schmuck.....                      | do.....              |  |
| J. Ripley.....                         | do.....              | A. C. S.                                 |
| Hugh K. Mead.....                      | do.....              |  |
| J. Parkhurst, (died July 6, 1821)..... | July 1, 1818         |  |
| James Monroe.....                      | Dec 31, 1818         | A. C. S.                                 |
| J. D. Graham.....                      | Sept. 8, 1819        |  |
| J. R. Vinton.....                      | Sept. 30, 1819       |  |
| W. G. McNeill.....                     | Dec. 4, 1819         |  |
| T. I. Gardner.....                     | Dec. 31, 1819        |  |
| John Symington.....                    | May 17, 1820         |  |
| I. M. Washington.....                  | May 23, 1820         |  |
| W. Wright.....                         | Aug. 23, 1820        |  |
| <i>Second Lieutenants.</i>             |                      |  |
| Joseph N. Chambers.....                | July 24, 1818        |  |
| Charles Ward.....                      | Oct. 1, 1818         |  |
| Henry A. Thompson.....                 | July 1, 1819         |  |
| William Turnbull.....                  | do.....              |  |
| Ethan C. Sickles.....                  | do.....              |  |
| James S. Hepburn.....                  | do.....              |  |
| Joseph D. Rupp.....                    | do.....              |  |
| James R. Blaney.....                   | do.....              |  |
| George C. Hutter.....                  | Jan. 28, 1820        |  |
| E. G. W. Butler.....                   | July 1, 1820         |  |
| J. H. Winder.....                      | do.....              |  |
| S. B. Dusenbury.....                   | do.....              |  |
| W. S. Maitland.....                    | do.....              |  |
| Edwin B. Alberti.....                  | July 12, 1820        |  |
| John T. Davidson, (dead).....          | Oct. 27, 1820        |  |
| H. P. Welch.....                       | do.....              |  |
| P. Morrison.....                       | do.....              |  |
| Charles Thomas.....                    | June 1, 1821         |  |
| <i>Ordnance Storekeepers.</i>          |                      | Station.                                 |
| William W. Paine.....                  | do.....              | Richmond.                                |
| J. Snowden.....                        | do.....              | West Point.                              |
| Jacint Laval.....                      | do.....              | Harper's Ferry.                          |
| A. Giles.....                          | do.....              | New York.                                |
| Thomas Harrison.....                   | do.....              | Schuylkill.                              |
| H. McCall.....                         | do.....              | Charleston.                              |
| D. Hopkins.....                        | do.....              | Baltimore.                               |
| J. Whistler.....                       | do.....              | Belle Fontaine.                          |
| H. Johnson.....                        | do.....              |  |

## B—Continued.

| Names and rank.        | Date of appointment. | Brevets and former commissions.         |
|------------------------|----------------------|---|
| FIRST INFANTRY.        |                      |   |
| Colonel.               |                      |   |
| T. Chambers.....       | Nov. 10, 1818        |   |
| Lieutenant Colonel.    |                      |   |
| R. Butler.....         | April 20, 1819       |   |
| Z. Taylor.....         |                      |   |
| Major.                 |                      |   |
| R. Whartenby .....     | April 13, 1817       | Bvt, May 1, 1814.                       |
| Captains.              |                      |   |
| S. W. Kearney.....     | April 1, 1813        | A. Q. M.<br>Bvt, Aug. 20, 1814.         |
| John Jones.....        | July 29, 1813        |   |
| W. C. Beard.....       | May 1, 1817          | Bvt, Nov. 7, 1814.                      |
| James H. Gale.....     | July 31, 1817        |   |
| Richard K. Call.....   | July 1, 1818         | A. q. m. major staff, Oct.<br>17, 1820. |
| W. V. Cobbs.....       | Mar. 31, 1819        |   |
| G. Loomis.....         | April 7, 1819        |   |
| T. F. Smith.....       | April 25, 1819       |   |
| Truman Cross.....      | Sept. 27, 1819       |   |
| S. H. Webb.....        | July 9, 1820         |   |
| Wm. H. Ker.....        | Dec. 1, 1820         |   |
| R. D. Richardson.....  | Aug. 5, 1813         |   |
| First Lieutenants.     |                      |   |
| Garston Powell.....    | July 1, 1818         |   |
| George C. Spencer..... | Oct. 1, 1818         |   |
| E. A. Hitchcock.....   | Oct. 31, 1818        |   |
| Wm. S. Harney.....     | Jan. 7, 1819         |   |
| W. R. Jouett.....      | Mar. 31, 1819        |   |
| Samuel L. Isett.....   | Sept. 27, 1819       |   |
| Thos. Barker.....      | July 23, 1820        | A. C. S.                                |
| Const. Pierce.....     | Sept. 3, 1820        |   |
| E. Davis.....          | Oct. 3, 1820         |   |
| Alfred Mitchell.....   | Dec. 1, 1820         |   |
| Second Lieutenants.    |                      |   |
| E. J. Lambert.....     | Mar. 10, 1819        |   |
| W. Malcolm.....        | July 1, 1819         |   |
| J. Mackenzie.....      | do.                  |   |
| Jasper Strong.....     | do.                  |   |
| John Tucker.....       | Dec. 4, 1819         | A. C. S.                                |
| Ths. J. Ayres.....     | Jan. 28, 1820        |   |
| Mart. Burke.....       | do.                  |   |
| Samuel M'Ree.....      | July 1, 1820         |   |
| William Day.....       | Oct. 27, 1820        |   |
| Ths. P. Gwynne.....    | Dec. 12, 1820        |   |
| Sutler.                |                      |   |
| S. Culbertson.....     |                      |   |

## B—Continued.

| Names and rank.                             | Date of appointment. | Brevets and former commissions. |
|---|----------------------|---------------------------------|
| <b>SECOND INFANTRY.</b>                     |                      |                                 |
| <i>Colonel.</i>                             |                      |                                 |
| Hugh Brady .....                            | July 6, 1812         |                                 |
| <i>Lieutenant Colonel.</i>                  |                      |                                 |
| W. Lawrence .....                           | May 8, 1818          | Bvt., Sept. 15, 1814.           |
| <i>Major.</i>                               |                      |                                 |
| Eros Cutler .....                           | Feb. 10, 1818        | Bvt., May 1, 1814.              |
| <i>Captains.</i>                            |                      |                                 |
| Alex. R. Thompson .....                     | May 1, 1814          |                                 |
| Newman S. Clark .....                       | Oct. 1, 1814         | Bvt., July 25, 1814.            |
| E. Boardman .....                           | Mar. 31, 1817        | Bvt., Aug. 1, 1813.             |
| J. H. Ballard .....                         | April 22, 1817       |                                 |
| T. J. Beall .....                           | Sept. 26, 1818       | Bvt., Mar. 17, 1814.            |
| W. Hoffman .....                            | May 1, 1819          |                                 |
| J. H. Wilkins .....                         | Aug. 28, 1819        |                                 |
| G. Dearborn .....                           | Sept. 30, 1819       |                                 |
| T. Staniford .....                          | Mar. 1, 1820         |                                 |
| Daniel Curtis .....                         | Oct. 17, 1820        |                                 |
| <i>First Lieutenants.</i>                   |                      |                                 |
| B. A. Boynton .....                         | Nov. 25, 1813        |                                 |
| Owen Ransom .....                           | April 19, 1814       |                                 |
| James Young .....                           | June 30, 1814        | A. C. S.                        |
| S. B. Griswold .....                        | Sept. 1, 1814        |                                 |
| Walter Bicker, jr. ....                     | do.                  |                                 |
| R. M. Harrison .....                        | Nov. 1, 1817         | A. Q. M.                        |
| C. F. Morton .....                          | Mar. 31, 1819        |                                 |
| Seth Johnson .....                          | May 1, 1819          |                                 |
| Joshua B. Brant .....                       | Dec. 1, 1819         | A. q. m. bvt., Sept. 17, 1814.  |
| John Clitz .....                            | Dec. 31, 1819        |                                 |
| E. K. Barnum .....                          | Dec. 30, 1819        |                                 |
| <i>Second Lieutenants.</i>                  |                      |                                 |
| Henry Smith .....                           | June 17, 1816        |                                 |
| M. F. Van De Venter, (died August 27) ..... | July 22, 1822        |                                 |
| Edwin V. Sumner .....                       | Mar. 3, 1819         |                                 |
| Edmund B. Griswold .....                    | Aug. 13, 1819        |                                 |
| Samuel L. Russel .....                      | do.                  |                                 |
| David Brooks .....                          | Jan. 28, 1820        |                                 |
| Carlos A. Waite .....                       | do.                  |                                 |
| George F. Lindsay .....                     | July 1, 1820         |                                 |
| J. B. Pendleton .....                       | July 12, 1820        |                                 |
| J. S. Gallagher .....                       | Oct. 4, 1820         |                                 |
| A. Morton .....                             | July 1, 1821         |                                 |
| <i>Sutler.</i>                              |                      |                                 |
| R. Gray .....                               |                      |                                 |

## B—Continued.

| Names and rank.          | Date of appointment. | Brevets and former commissions. |
|--------------------------|----------------------|---------------------------------|
| THIRD INFANTRY.          |                      |                                 |
| Colonel.                 |                      |                                 |
| N. Pinkney.....          | May 13, 1820         |                                 |
| Lieutenant Colonel.      |                      |                                 |
| John M'Neal, jr. ....    | Feb. 24, 1818        | Col. bvt., July 25, 1814.       |
| Major.                   |                      |                                 |
| D. Baker.....            | June 1, 1819         | Bvt., Aug. 9, 1812.             |
| Captains.                |                      |                                 |
| C. Larrabee.....         | Sept. 12, 1812       | Maj. bvt., Aug. 9, 1812.        |
| William Whistler .....   | Dec. 31, 1812        |                                 |
| Stephen W. Kearney. .... | April 1, 1813        |                                 |
| B. Watson.....           | Aug. 13, 1813        |                                 |
| Hez. Bradley .....       | April 19, 1814       |                                 |
| John Green.....          | Sept. 25, 1814       |                                 |
| W. C. Beard.....         | May 1, 1817          |                                 |
| J. Garland .....         | May 7, 1817          |                                 |
| W. Browning.....         | Nov. 1, 1817         | Bvt., Oct. 31, 1814.            |
| R. Humphrey.....         | Dec. 24, 1818        |                                 |
| R. B. Mason.....         | July 31, 1819        |                                 |
| J. S. Nelson.....        | Aug. 13, 1819        | Bvt., April 30, 1813.           |
| First Lieutenants.       |                      |                                 |
| William G. Belknap.....  | Aug. 19, 1814        |                                 |
| John B. Clark.....       | May 7, 1817          | A. C. S.                        |
| Ed. E. Brooks.....       | June 1, 1817         |                                 |
| Andrew Lewis.....        | Feb. 10, 1818        |                                 |
| T. J. Harrison.....      | April 20, 1818       |                                 |
| R. C. Pomeroy .....      | Sept. 1, 1818        |                                 |
| James Dean.....          | Oct. 31, 1818        |                                 |
| A. Musser.....           | June 1, 1819         |                                 |
| Hor. Webster.....        | April 5, 1820        |                                 |
| Henry H. Loring.....     | Oct. 17, 1820        |                                 |
| Second Lieutenants.      |                      |                                 |
| Samuel W. Hunt.....      | Feb. 3, 1819         |                                 |
| H. N. Baker.....         | Aug. 13, 1819        | A. C. S.                        |
| J. W. Webb.....          | do.....              |                                 |
| J. C. Hayward.....       | Jan. 28, 1820        |                                 |
| B. Walker.....           | Dec. 11, 1819        |                                 |
| A. Woodward.....         | May 17, 1820         |                                 |
| J. M. Tufts.....         | July 1, 1820         |                                 |
| L. N. Morris.....        | do.....              |                                 |
| Stewart Cowan.....       | July 12, 1820        |                                 |
| William Tolson.....      | do.....              |                                 |
| James B. Allen.....      | Oct. 27, 1820        |                                 |
| Edwin A. Caldwell.....   | do.....              |                                 |
| Otis Wheeler.....        | July 1, 1821         |                                 |
| H. Bainbridge.....       | do.....              |                                 |



## B—Continued.

| Names and rank.            | Date of appointment. | Brevets and former commissions. |
|----------------------------|----------------------|---------------------------------|
| <i>Sullers.</i>            |                      |                                 |
| J. Dean, Green Bay .....   | .....                | .....                           |
| H. Whiting, Chicago .....  | .....                | .....                           |
| FOURTH INFANTRY.           |                      |                                 |
| <i>Colonels.</i>           |                      |                                 |
| D. L. Clinch .....         | .....                | .....                           |
| R. Butler .....            | June 1, 1821         | Col. staff, Mar. 5, 1814.       |
| <i>Lieutenant Colonel.</i> |                      |                                 |
| G. M. Brooke .....         | Mar. 1, 1819         | Col. bvt., Sept. 17, 1814.      |
| <i>Major.</i>              |                      |                                 |
| J. B. Maney .....          | May 5, 1813          | .....                           |
| <i>Captains.</i>           |                      |                                 |
| J. H. Vose .....           | July 6, 1812         | Maj. bvt., Aug. 4, 1814.        |
| Saunders Donoho .....      | do .....             | .....                           |
| James H. Hook .....        | May 20, 1813         | .....                           |
| J. S. M'Intosh .....       | Mar. 8, 1817         | .....                           |
| James M. Glassell .....    | Feb. 10, 1818        | Maj. staff, May 22, 1818.       |
| Francis L. Dade .....      | Feb. 24, 1818        | .....                           |
| Philip Wager .....         | May 8, 1818          | .....                           |
| R. Humphrey .....          | Dec. 24, 1818        | .....                           |
| Hen. Wilson .....          | April 20, 1819       | .....                           |
| R. M. Sands .....          | April 30, 1819       | .....                           |
| F. W. Brady .....          | Dec. 31, 1820        | .....                           |
| <i>First Lieutenants.</i>  |                      |                                 |
| H. R. Dulany .....         | Feb. 10, 1818        | .....                           |
| William Lear .....         | Feb. 24, 1818        | .....                           |
| Jer. Yancey .....          | Dec. 1, 1818         | .....                           |
| G. W. Allen .....          | Jan. 1, 1819         | .....                           |
| J. Page .....              | do .....             | .....                           |
| Lee Slaughter .....        | April 30, 1819       | .....                           |
| E. Webb .....              | July 31, 1819        | .....                           |
| William M. Graham .....    | Aug. 11, 1819        | .....                           |
| Edw. Alexander .....       | Aug. 20, 1820        | .....                           |
| Thos. Johnston .....       | Dec. 31, 1820        | .....                           |
| <i>Second Lieutenants.</i> |                      |                                 |
| Jos. B. Shaw .....         | Nov. 12, 1818        | .....                           |
| W. H. Mann .....           | Feb. 3, 1819         | .....                           |
| R. B. A. Tate .....        | Mar. 3, 1819         | .....                           |
| Arthur W. Thornton .....   | Nov. 30, 1819        | A. C. S.                        |
| John J. Jackson .....      | Dec. 1, 1819         | .....                           |
| George Mountz .....        | Jan. 28, 1820        | .....                           |
| J. B. Triplet .....        | Oct. 27, 1820        | .....                           |
| William Martin .....       | do .....             | .....                           |
| T. Burk .....              | do .....             | .....                           |
| Edward N. Dulany .....     | do .....             | .....                           |

## B—Continued.

| Names and rank.             | Date of appointment. | Brevets and former commissions. |
|-----------------------------|----------------------|---------------------------------|
| <i>Sutler.</i>              |                      |                                 |
| W. M. Read .....            | .....                | .....                           |
| FIFTH INFANTRY.             |                      |                                 |
| <i>Colonel.</i>             |                      |                                 |
| Josiah Snelling .....       | June 1, 1819         |                                 |
| <i>Lieutenant Colonels.</i> |                      |                                 |
| W. Morgan .....             | .....                |                                 |
| Henry Leavenworth .....     | Feb. 10, 1818        | Col. bvt., July 25, 1814.       |
| <i>Major.</i>               |                      |                                 |
| J. E. Dinkins .....         | May 8, 1818          | Bvt., May 15, 1814.             |
| <i>Captains.</i>            |                      |                                 |
| J. H. Vose .....            | July 6, 1812         |                                 |
| S. Burbank .....            | Mar. 13, 1813        | Maj. bvt., July 25, 1814.       |
| George Bender .....         | May 13, 1813         | A. Q. M.                        |
| John Bliss .....            | May 13, 1813         |                                 |
| M. Marston .....            | June 26, 1813        | Maj. bvt., Aug. 15, 1814.       |
| Ben. Watson .....           | Aug. 15, 1813        | Maj. bvt., July 25, 1814.       |
| J. Fowle, jr. ....          | June 10, 1814        |                                 |
| David Perry .....           | Sept. 1, 1814        |                                 |
| Bennet Riley .....          | Aug. 6, 1818         |                                 |
| M. J. McGee .....           | July 10, 1815        |                                 |
| Charles L. Cass .....       | Dec. 31, 1818        |                                 |
| T. F. Hunt .....            | May 20, 1820         | A. Q. M.                        |
| <i>First Lieutenants.</i>   |                      |                                 |
| J. Plympton .....           | July 31, 1813        |                                 |
| S. B. Griswold .....        | Sept. 1, 1814        |                                 |
| D. Wilcox .....             | Oct. 2, 1814         |                                 |
| Rt. A. M'Cabe .....         | Oct. 16, 1816        | Bvt., May 1, 1814.              |
| Nathan Clark .....          | Mar. 17, 1817        | A. C. S.                        |
| T. Hunt .....               | July 1, 1817         | A. C. S.                        |
| J. M'Ilvain .....           | April 30, 1819       |                                 |
| M. Scott .....              | Nov. 2, 1819         |                                 |
| G. Lowe .....               | Mar. 15, 1820        |                                 |
| P. R. Green .....           | Mar. 27, 1820        |                                 |
| E. K. Barnum .....          | Dec. 31, 1820        |                                 |
| <i>Second Lieutenants.</i>  |                      |                                 |
| S. S. Stacy .....           | July 22, 1817        | A. C. S.                        |
| C. Burbridge .....          | June 16, 1818        |                                 |
| J. C. Russell .....         | July 24, 1818        |                                 |
| C. C. Hobart .....          | Oct. 8, 1818         |                                 |
| Jos. M. Baxley .....        | Aug. 13, 1819        |                                 |
| D. Tyler .....              | July 1, 1819         |                                 |
| A. Pickerin .....           | Aug. 13, 1819        |                                 |
| B. Gorham .....             | July 1, 1820         |                                 |
| W. E. Cruger .....          | July 12, 1820        |                                 |
| Phineas Andrews .....       | Oct. 27, 1820        |                                 |
| W. Alexander .....          | do.....              |                                 |
| S. M. Capron .....          | July 1, 1821         |                                 |

## B—Continued.

| Names and rank.                         | Date of appointment. | Brevets and former commissions. |
|---|----------------------|---------------------------------|
| <i>Sutlers.</i>                         |                      |                                 |
| L. Learned, St. Peter's.....            | -----                |                                 |
| G. Gooding, Prairie du Chien.....       | -----                |                                 |
| SIXTH INFANTRY.                         |                      |                                 |
| <i>Colonels.</i>                        |                      |                                 |
| H. Atkinson .....                       | -----                |                                 |
| Duncan L. Clinch.....                   | April 20, 1819       |                                 |
| <i>Lieutenant Colonels.</i>             |                      |                                 |
| H. Leavenworth.....                     | -----                |                                 |
| Willoughby Morgan.....                  | Nov. 10, 1818        |                                 |
| <i>Major.</i>                           |                      |                                 |
| Alex. Cummings.....                     | April 20, 1819       |                                 |
| <i>Captains.</i>                        |                      |                                 |
| W. S. Foster .....                      | Mar. 13, 1813        | Maj. bvt., Aug. 15, 1814.       |
| Dan. Ketchum.....                       | Sept. 30, 1813       | Maj. bvt., July 25, 1814.       |
| Th. Hamilton.....                       | Feb. 21, 1814        |                                 |
| W. Martin .....                         | Mar. 17, 1814        |                                 |
| Matthew J. Magee.....                   | Feb. 10, 1815        |                                 |
| William Haile.....                      | May 14, 1818         |                                 |
| J. M'Gunnegle.....                      | July 12, 1818        | A. Q. M.                        |
| William Armstrong.....                  | July 31, 1818        |                                 |
| B. Riley .....                          | Aug. 6, 1818         |                                 |
| James S. Gray.....                      | Nov. 10, 1818        |                                 |
| Ephraim Shaylor.....                    | April 30, 1819       |                                 |
| <i>First Lieutenants.</i>               |                      |                                 |
| J. Clark, jr.....                       | Sept. 1, 1814        | A. C. S.                        |
| John Gantt.....                         | April 5, 1818        |                                 |
| Gab. Field .....                        | April 15, 1818       |                                 |
| C. Pentland.....                        | July 31, 1818        |                                 |
| Thos. W. Kavanaugh.....                 | Nov. 10, 1818        |                                 |
| L. Palmer .....                         | do.....              |                                 |
| Jacob Brown .....                       | Aug. 18, 1819        | A. C. S.                        |
| Samuel Shannon.....                     | Feb. 23, 1820        |                                 |
| Hen. Taylor .....                       | Mar. 1, 1820         |                                 |
| Zalmon C. Palmer.....                   | do.....              |                                 |
| <i>Second Lieutenants.</i>              |                      |                                 |
| W. D. McCray.....                       | Feb. 3, 1819         |                                 |
| Jos. Buckley.....                       | Aug. 13, 1819        |                                 |
| William N. Wickliffe.....               | Sept. 20, 1819       |                                 |
| John Duncan.....                        | Dec. 4, 1819         |                                 |
| Jno. Bradley .....                      | Jan. 28, 1820        |                                 |
| N. I. Cruger .....                      | July 1, 1820         |                                 |
| Thos. Noel .....                        | do.....              |                                 |
| W. W. Morris.....                       | do.....              |                                 |
| Wharton Rector .....                    | July 12, 1820        |                                 |
| Rd. Wells, (resigned Dec. 1, 1821)..... | Oct. 27, 1828        |                                 |
| Jos. Buckley.....                       | June 1, 1821         |                                 |
| <i>Sutler.</i>                          |                      |                                 |
| Jno. O. Fallan, Council Bluffs.....     | -----                |                                 |

## B—Continued.

| Names and rank.            | Date of appointment. | Brevets and former commissions. |
|----------------------------|----------------------|---------------------------------|
| SEVENTH INFANTRY.          |                      |                                 |
| <i>Colonel.</i>            |                      |                                 |
| Matthew Arbuckle.....      | Mar. 16, 1820        |                                 |
| <i>Lieutenant Colonel.</i> |                      |                                 |
| William Lindsay.....       | Mar. 12, 1813        |                                 |
| Z. Taylor.....             |                      |                                 |
| <i>Major.</i>              |                      |                                 |
| A. R. Woolley.....         | Feb. 9, 1815         |                                 |
| <i>Captains.</i>           |                      |                                 |
| William Bradford.....      | July 6, 1812         | Major bvt., Aug. 20, 1814.      |
| D. E. Twiggs.....          | July 6, 1812         | Major bvt., Sept. 21, 1814.     |
| W. Davenport.....          | Sept. 28, 1812       |                                 |
| R. D. Richardson.....      | Aug. 5, 1813         |                                 |
| J. S. Allison.....         | June 25, 1814        |                                 |
| George Birch.....          | Aug. 31, 1816        |                                 |
| R. B. Hyde.....            | Oct 31, 1818         |                                 |
| Nath. Young.....           | Jan. 1, 1819         |                                 |
| G. Leftwich.....           | June 15, 1819        |                                 |
| T. Cross.....              | Sept 20, 1819        |                                 |
| Daniel E. Burch.....       | June 30, 1820        |                                 |
| <i>First Lieutenants.</i>  |                      |                                 |
| H. Berryman.....           | Dec. 31, 1818        |                                 |
| G. Murdock.....            | Jan. 31, 1819        |                                 |
| J. Wheelock.....           | Mar. 19, 1819        |                                 |
| Jno. Philbrick.....        | April 11, 1819       |                                 |
| N. G. Wilkinson.....       | May 31, 1819         |                                 |
| A. M. Houston.....         | Aug. 31, 1819        |                                 |
| William N. Bronaugh.....   | Dec. 31, 1819        |                                 |
| Richard Wash.....          | June 30, 1820        |                                 |
| B. L. E. Bonneville.....   | July 9, 1820         |                                 |
| J. B. Hobkirk.....         | Oct. 31, 1820        | A. C. S.                        |
| <i>Second Lieutenants.</i> |                      |                                 |
| Pierce Butler.....         | Aug. 13, 1819        |                                 |
| John Stewart.....          | do.....              |                                 |
| James Dawson.....          | do.....              |                                 |
| W. S. Colquhoun.....       | Dec. 4, 1819         | A. C. S.                        |
| W. W. Outlaw.....          | do.....              |                                 |
| John McCauley, (dead)..... | Jan. 28, 1820        |                                 |
| Norman Holmes.....         | do.....              |                                 |
| Edgar S. Hawkins.....      | July 1, 1820         |                                 |
| R. D. A. Wade.....         | Oct. 27, 1820        |                                 |
| Robert Ross.....           | do.....              |                                 |
| James Dawson.....          | June 1, 1821         |                                 |
| <i>Sutlers.</i>            |                      |                                 |
| John Nicks, Arkansas.....  |                      |                                 |
| W. Kendall, Red River..... |                      |                                 |

The Board of General Officers beg leave to recommend, that in case Brevet Brigadier General Atkinson should elect to take a regiment of infantry, (say the 6th,) Colonel D. L. Clinch be, in that case, arranged to the 4th infantry, Colonel R. Butler as lieutenant colonel of the 1st infantry, Lieutenant Colonel Taylor as major of the 7th infantry, Major Woolley to the 4th artillery, as captain, in the place of Captain Sands; the latter transferred to the 1st infantry, in the place of Captain Cobbs, to be left out.

JAC. BROWN.

CITY OF WASHINGTON, May 14, 1821.

The four regiments of artillery—

|  |       |
|--|-------|
| Thirty-six companies of fifty-five non-commissioned officers, artificers, musicians, and privates..... | 1,980 |
| Enlisted men for ordnance duties .....   | 56    |

The seven regiments of infantry—

|   |       |
|---|-------|
| Seventy companies of fifty-one non-commissioned officers, musicians, and privates.... | 3,570 |
| And the non-commissioned staff .....  | 36    |

|                         |       |
|-------------------------|-------|
| Making a total of ..... | 5,642 |
|-------------------------|-------|

To be distributed as follows :

#### FIRST REGIMENT OF ARTILLERY.

Colonel Porter, Boston.

Lieutenant Colonel Bomford, Ordnance.

Major Walbach, Portsmouth.

Brevet Major Dalliba, Ordnance.

*Fort Sullivan, Maine.*—Captain Mason ; First Lieutenants Dana and Brent ; Second Lieutenants Walker and Tone.

*Fort Preble, Maine.*—Captain Brooks ; First Lieutenants Simonson and Patrick ; Second Lieutenants Ramsay and Davidson.

*Fort Constitution, New Hampshire.*—Captain F. Whiting ; First Lieutenants Merchant and Griswold ; Second Lieutenants Howard and Van Ness.

*Harbor of Boston, Massachusetts.*—Captains Eastman and H. Whiting ; First Lieutenants Dix, Willard, Smith, and Smith ; Second Lieutenants McIntire, Kinsley, Dimick, and Swift.

*Fort Wolcott, Rhode Island.*—Captain Crane ; First Lieutenants Baden and Abeel ; Second Lieutenants Wharton and Pickevin.

*Fort Trumbull, Connecticut.*—Captain McDowell ; First Lieutenants Saunders and Kirby ; Second Lieutenants Brown and Vining.

*Harbor of New York.*—Captains Churchill and Worth ; First Lieutenants Melendy, Gardiner, Dispinville, and Kirk ; Second Lieutenants Cooper, Porter, Webb, and Whistler.

#### SECOND REGIMENT OF ARTILLERY.

Colonel Towson, Fort McHenry.

Lieutenant Colonel House, Detroit.

Major Hindeman, Fort Mifflin.

Captain Talcott, Ordnance.

*Fort Mifflin, Pennsylvania.*—Captain Roach ; First Lieutenants Kirby and Wilkins ; Second Lieutenants Fowler and Thomas.

*Fort McHenry, Maryland.*—Captain Belton ; First Lieutenants Fitzhugh and Mallory ; Second Lieutenants Ringgold and Dumest.

*West Point, New York.*—Captain Fanning ; First Lieutenants Bache and Galt ; Second Lieutenants Green and Gilbert.

*Arsenal, Watervleit, New York.*—Captain Gates ; First Lieutenants Welsh and Lowd ; Second Lieutenants Strong and De Hart.

*Plattsburg, New York.*—Captain Zantzinger ; First Lieutenants Thompson and Eakin ; Second Lieutenants Williams and Bowes.

*Fort Niagara, New York.*—Captain Heilman ; First Lieutenants De Russey and Green ; Second Lieutenants Harding and Gates.

*Pittsburg, Pennsylvania.*—Captain Nourse ; First Lieutenants Armstrong and Wells ; Second Lieutenants Ridgeley and Buchanan.

*Detroit, Michigan Territory.*—Captain Mountfort ; First Lieutenants Mellon and Davis ; Second Lieutenants Webb and Tomkins.

*Mackinac, Michigan Territory.*—Captain Legate; First Lieutenants Lyon and Pierce; Second Lieutenants Chambers and Barney.

### THIRD REGIMENT OF ARTILLERY.

Colonel Armistead, Fort Washington.  
Lieutenant Colonel Mitchell, Fort Norfolk.  
Major Bankhead, Charleston.  
Captain Archer, Ordnance.

*Annapolis, Maryland.*—Captain Jones; First Lieutenants Lendrum and Lee; Second Lieutenants Hopkins and Stewart.

*Fort Washington, Potomac.*—Captain Ansart; First Lieutenants Childs and Boothe; Second Lieutenants Hamtramck and J. Smith.

*Richmond, Virginia.*—Captain Baker; First Lieutenants Baird and Hill; Second Lieutenants Bell and Barbarin.

*Norfolk Harbor, Virginia.*—Captains Stockton and Lomax; First Lieutenants Mackay, Fraser, Spencer, and Adams; Second Lieutenants Corprew, Brokenbrough, Garner, and Kerr.

*Fort Johnson, Smithville, N. C.*—Captain Wilson; First Lieutenants Spotts and Thurston; Second Lieutenants McKenzie and Feltus.

*Charleston Harbor, S. C.*—Captains Lavall and Morris; First Lieutenants Taylor, J. L. Gardner, Evans, and Griffith; Second Lieutenants Newton, L'Engle, Edwards, and Lowndes.

*Arsenal, Augusta, Georgia.*—Captain Craig; First Lieutenants Phillips and Webber; Second Lieutenants Rigail and Sudler.

### FOURTH REGIMENT OF ARTILLERY.

Colonel Fenwick, Pensacola.  
Lieutenant Colonel Mac Rea, New Orleans.  
Major Eustis, St. Augustine.  
Captain Wade, Ordnance.

*Fort Jackson, Savannah, Georgia.*—Captain Erving; First Lieutenants Symington and Wright; Second Lieutenants Thomas and Maitland.

*Fernandina, Amelia Island.*—Captain Payne; First Lieutenants J. Monroe and Washington; Second Lieutenants Hepburn and Morrison.

*St. Augustine, East Florida.*—Captains Bell and Hobart; First Lieutenants Washburn, Drane, Ripley, and T. J. Gardner; Second Lieutenants Sickels, Rupp, Alberti, and Davidson.

*St. Marks, Florida.*—Captains Burd and Sands; First Lieutenants McClintock, Pankhurst, James Monroe, and Vinton; Second Lieutenants Blaney, Hutter, Winder, and Dusenbury.

*Pensacola, Florida.*—Captains Pierce and Hayden; First Lieutenants L. Whiting, Massay, J. D. Graham, and McNeil; Second Lieutenants Jos. Chambers, Thompson, Turnbull, and Butler.

*Fort St. Philip, Louisiana.*—Captain E. Humphrey; First Lieutenants Schmuck and Mead; Second Lieutenants Ward and Welch.

First regiment of infantry, Baton Rouge.

Second regiment of infantry, Sackett's Harbor.

Third regiment of infantry, Green Bay and Chicago; at Green Bay eight, and at Chicago two companies.

Fourth regiment of infantry, Pensacola.

Fifth regiment of infantry, St. Peter's, Prairie du Chien, and Fort Armstrong; at St. Peter's seven, at Prairie du Chien two, and at Fort Armstrong one company.

Sixth regiment of infantry, Council Bluffs.

Seventh regiment of infantry, Arkansas and Red rivers; six companies on Red river, four on the Arkansas.

And the President further directs, until otherwise ordered, that the immediate command of all the troops, as above distributed, west of a line drawn from the southernmost point of East Florida to the northwest extremity of Lake Superior, be assigned to Brevet Major General Gaines; and that the command of the troops east of such line be assigned to Brevet Major General Scott. The whole of Tennessee and Kentucky being considered in the western department.

The headquarters of Major General Brown will be in the District of Columbia; the headquarters of the western department will be at Louisville, Kentucky; and the headquarters



of the eastern department will be at Governor's Island, New York, when the generals are not on visits of inspection and tours of duty.

All officers included in the above list, and not on special duty, will forthwith join their respective regiments and commands.

Officers who are designated as assistant quartermasters and assistant commissaries of subsistence, will forthwith report, by letter, to those departments for specific instructions.

Special orders having been given to local commanders, for consolidating and reducing the troops, preparatory to this arrangement, all supernumerary non-commissioned officers, artificers, musicians, and privates, if any such remain in service, will be discharged at their respective posts as soon as practicable.

All officers whose names are not included in the above list must consider themselves disbanded on the first of June next, except quartermasters, commissaries, and storekeepers charged with the safe keeping of public property, who will remain in service until specially relieved from their accountability.

It is deemed inexpedient to continue arrests or proceedings of courts-martial which may have been instituted on officers not retained in the army. All such officers will be released from arrest and discharged from further duty.

All deserters from the army of the United States, previous to the date of this order, may peaceably and safely return to their homes, without being subject to punishment or trial, on account of such desertion. No reward or expenses will be allowed for apprehending any soldier who deserted prior to this order.

All soldiers in confinement by sentence of courts-martial, will be dismissed the service with disgrace.

The regulations relative to transfers is so far suspended that officers may be taken from one regiment or corps and arranged to another, the more perfectly to complete the organization, without consulting the individuals interested, until the first of January next.

By order :

D. PARKER,  
*Adjutant and Inspector General.*

NOTE —In arranging the lieutenants of artillery to the most convenient stations for immediate duty, attention has not been paid in all cases by the board of officers to equal promotion, which must be a subject of future orders.

## E.

HEADQUARTERS OF THE ARMY,  
*Washington, April 26, 1837.*

SIR: I have presented my claim to the Secretary of War, for the difference between the pay and emoluments of brigadier general and major general by brevet, during the time I was in command of the engineer department, viz.: from the 1st of June, 1821, to the 23d of May, 1828, which claim was before Congress and returned by the House of Representatives, with the declaration that it was in the power of the executive officers of the War Department and the accounting officers of the Treasury to decide on the account, and directed it to be referred to the Secretary of War, *to be adjusted on the same principles that officers under similar circumstances had been settled with.*

The Secretary of War has requested me to furnish him with evidences of officers under similar circumstances having been settled with, and I have to request that you will be good enough to state the circumstances under which the accounts of the following officers, for brevet pay, were settled; all of which I consider to be similar cases to mine.

1st. Major Totten, of the corps of engineers, having the brevet rank of lieutenant colonel, was allowed the pay of lieutenant colonel by President Monroe, because he was president of the Board of Engineers, having under his command two or more majors as members of that

board, from 1st of May, 1819, to 31st of October, 1822. Afterwards the brevet pay as lieutenant colonel was continued to him, and now as brevet colonel, because he has under his command a force in officers, mechanics, and laborers, deemed equal to the command of a colonel, and that allowance is continued.

2d case. Captain De Russy, of the corps of engineers, major by brevet, received, while superintending the fortifications in the harbor of New York, the pay and allowance of a major from 1st October to 31st December, 1825, because he had under his command a numerical force of officers, mechanics, and laborers, equal to the command of a major, allowed by the decision of the Secretary of War, Mr. Barbour, 8th January, 1827, and continued.

3d case. Topographical Engineer Brevet Major Abert, lieutenant colonel by brevet, being in charge of the Topographical Bureau, was allowed by the decision of Mr. Secretary of War Barbour, his brevet pay as lieutenant colonel, because he had charge of that bureau and the command of all the officers of Topographical Engineers and their assistants.

These cases I deem sufficient to establish the fact that officers under similar circumstances with me, as a brevet officer, have received their full allowance of brevet pay and emoluments, and are precedents for establishing my claim. I could cite other cases, but I presume these three will be sufficient to satisfy the Secretary of War, who desired to know what precedents or similar cases there were to justify the settlement of my account.

If this statement be found correct as to the brevet officers mentioned in the three cases above, you will oblige me to state on this paper, or on any other, that the facts accord with the accounts of those officers, as settled in the Second Auditor's office.

I have the honor to be, very respectfully, sir, your obedient servant,

ALEXANDER MACOMB,  
*Major General.*

JAMES EAKIN, Esq.,  
*Acting Second Auditor of the Treasury.*

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TREASURY DEPARTMENT,  
*Second Comptroller's Office, April 29, 1837.*

I have seen the original papers in the three cases before referred to, and on examination find that the facts in each case are correctly stated by General Macomb.

ALBION K. PARRIS.

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F.

HEADQUARTERS OF THE ARMY,  
*Washington, June, 1837.*

General Macomb begs leave to lay before the Secretary of War the following points to justify the settlement of his claim for his brevet pay, which now is before the Secretary of War for his decision :

1. It is proved that General Macomb was assigned to the command of the engineer department by the President of the United States in his capacity of major general, having under him the corps of engineers, the corps of topographical engineers, the Military Academy, and the civil engineers. This command was equal to that of any other brevet major general's in the army, both in importance and numerically.—(See General Order 17th May, 1821.)

2. Brevet Major Generals Gains, Scott, and Ripley, all received the full amount of their brevet pay, and General Macomb, who received his brevet rank for services in the war under circumstances similar to theirs, is the only officer with the brevet rank of major general who has not received his full pay as such.

3. A resolution of the House of Representatives was passed on General Macomb's presenting his claim before the Military Committee, stating that it was competent to the Secretary of War and the accounting officers to decide on the claim, and referred it back to the *Secretary of War, to be settled on the same principles that officers similarly situated were settled with.*—(See Resolution of the House of Representatives.)

4. Officers similarly situated had their accounts of a similar character adjusted before General Macomb's was presented, and since similar accounts have been settled by the decision of the Secretary of War, viz.: Colonels Totten and Thayer, of the engineers, Lieutenant Colonel Bomford, of the artillery, while at the head of the ordnance department, before the present department was organized, was a lieutenant colonel of artillery, and received his brevet pay as full colonel, his command consisting of artillery officers acting in the ordnance and mechanics and laborers. Lieutenant Colonel Abert, of the topographical, Majors De Russy and Smith, of the corps of engineers. All these officers had commands similar to that of General Macomb, and most of them—indeed, all of them, were under his immediate command, except Colonel Bomford. There was also Brigadier General Barnard under his command.

5. The justice, equity, and legality of the claim have never been denied; but as the command was not in *the line of the army* it has made the difficulty with the accounting officers, as provision by regulation has alone been made for commanders in the line, while officers out of the line, however distinguished by the rewards of brevets conferred, have to look to the justice of the Secretary of War to decide on their cases, and separately to authorize the settlement of their claims.

The law says, when a brevet officer has a command "*according*" to his brevet rank he shall be entitled to his brevet pay. The word "*according*" admits of great latitude of interpretation, and is indefinite, so that the Secretary of War is at liberty to decide according to the resolution of the House of Representatives, and, in the case of Major General Macomb, direct the adjustment of his accounts on the same principles as other officers' accounts under similar circumstances have been adjusted and settled.

ALEXANDER MACOMB,  
*Major General.*

## C.

## TWENTY-THIRD CONGRESS—FIRST SESSION.

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES.—JANUARY 8, 1834.

Mr. RICHARD M. JOHNSON, for the Committee on Military Affairs,  
made the following

## REPORT.

*The Committee on Military Affairs, to whom was referred the petition  
of General Alexander Macomb, report:*

That the petitioner claims certain allowances of pay under his brevet rank as major general, which have never been allowed to him, but which, he alleges, have been allowed to others under similar circumstances, upon a fair construction of the laws regulating such matters. The committee do not conceive it to belong to them to undertake to give a construction to the laws on the subject of pay under brevet rank; that belongs to the accounting and executive officers of the War Department; and, if General Macomb is entitled to relief under those laws, it is competent for the Secretary of War to grant him such relief as others have received under similar circumstances. The committee ask leave to be discharged from the further consideration of the subject; and that the petition and papers be referred to the Secretary of War for adjustment upon the same principles that have regulated similar allowances to others—therefore,

*Resolved*, That the committee be discharged from the further consideration of the subject, and that all the papers be referred to the Secretary of War.

This report and resolution was read and adopted by the House of Representatives.

Attest:

W. S. FRANKLIN,  
*Clerk of the House of Representatives.*

## D.

*Statement showing the number of persons employed under the direction of the Engineer Department on the several fortifications and objects of internal improvement.*

|   | Officers of the corps of engineers. | Officers of the corps of Top'l Engs. | Assist' officers of the line of the army. | Overseers and clerks. | Professors, teachers, officers, and others. | Cadets. | Civil engineers, commiss'rs, superintendents, and agents. | Mechanics. | Laborers, boatmen, &c. | Soldiers. | Aggregate. |
|---|-------------------------------------|--------------------------------------|---|-----------------------|---|---------|---|------------|------------------------|-----------|------------|
| <b>CORPS OF ENGINEERS.</b>  |                                     |                                      |   |                       |   |         |   |            |                        |           |            |
| Fort Adams .....  | 3                                   |                                      |   | 7                     |   |         |   | 48         | 318                    |           | 376        |
| Fort Hamilton .....   | 2                                   |                                      |   | 4                     |   |         |   | 55         | 159                    |           | 220        |
| Fort Delaware .....   | 1                                   |                                      |   |                       |   |         |   | 34         | 10                     |           | 45         |
| Fort Monroe .....   | 2                                   |                                      |   | 10                    |   |         |   | 47         | 243                    |           | 302        |
| Fort Calhoun .....  | 1                                   |                                      |   | 7                     |   |         |   | 12         | 76                     |           | 96         |
| Fort Macon .....  | 1                                   |                                      |   | 2                     |   |         |   | 19         | 76                     |           | 98         |
| Fort at Oak Island .....  | 2                                   |                                      |   | 8                     |   |         |   | 52         | 227                    |           | 289        |
| Fort at Mobile Point .....  | 1                                   |                                      |   | 7                     |   |         |   | 28         | 309                    |           | 345        |
| Fort Jackson .....  | 1                                   |                                      |   | 9                     |   |         |   | 22         | 218                    |           | 250        |
| Fort Chef Menteur .....   | 3                                   |                                      |   |                       |   |         |   | 12         | 100                    |           | 115        |
| Fort Rigolets .....   |                                     |                                      |   |                       |   |         |   | 10         | 90                     |           | 100        |
| Fort Bayou Bienvenue .....  |                                     |                                      |   |                       |   |         |   | 12         | 71                     |           | 83         |
| Improving the harbor of Presque Isle .....  | 1                                   |                                      |   | 1                     |   |         |   | 5          | 20                     |           | 27         |
| Building and repairing piers at Newcastle .....   | 1                                   |                                      |   |                       |   |         |   |            |                        |           | 1          |
| Office of the Engineer department .....   | 2                                   |                                      |   |                       |   |         |   |            |                        |           | 2          |
| Board of engineers .....  | 1                                   |                                      |   |                       |   |         |   |            |                        |           | 1          |
| At the Military Academy .....   | 4                                   |                                      |   |                       |   |         |   |            |                        |           | 4          |
| Aid to General Brown .....  | 1                                   |                                      |   |                       |   |         |   |            |                        |           | 1          |
| On furlough .....   | 1                                   |                                      |   |                       |   |         |   |            |                        |           | 1          |
|   | 28                                  |                                      |   | 55                    |   |         |   | 356        | 1,917                  |           | 2,356      |
| <b>TOPOGRAPHICAL ENGINEERS.</b>   |                                     |                                      |   |                       |   |         |   |            |                        |           |            |
| On surveys in relation to roads and canals in Maine, Vermont, and New Hampshire .....                   |                                     | 1                                    | 7   |                       |   |         |   |            | 25                     |           | 33         |
| On surveys with a view to the improvement of certain harbors in Massachusetts and Connecticut, &c. .... |                                     | 1                                    | 2   |                       |   |         |   |            | 5                      |           | 8          |
| On surveys in relation to roads and canals in Ohio and Pennsylvania .....                               |                                     | 1                                    | 7   |                       |   |         |   |            | 21                     |           | 29         |
| On surveys in relation to roads and canals in Virginia .....  |                                     | 1                                    | 7   |                       |   |         |   |            | 19                     |           | 27         |
| On surveys in North Carolina .....  |                                     | 1                                    | 3   |                       |   |         |   |            | 10                     |           | 14         |
| Survey with a view to a canal in Florida .....  |                                     | 1                                    | 7   |                       |   |         |   |            | 54                     |           | 62         |
| Examining a route for a road from Zanesville, Ohio, to Florence, Ala. ....                              |                                     | 1                                    | 2   |                       |   |         |   |            |                        |           | 3          |
| In Topographical Bureau at Washington .....   |                                     | 1                                    | 1   |                       |   |         |   |            |                        |           | 2          |
| With board of internal improvement .....  |                                     | 1                                    |   |                       |   |         |   |            |                        |           | 1          |
| On furlough .....   |                                     | 1                                    |   |                       |   |         |   |            |                        |           | 1          |
|   |                                     | 10                                   | 36  |                       |   |         |   |            | 134                    |           | 180        |
| <b>CIVIL ENGINEERS, COMMISSIONERS OF ROADS, SUPERINTENDENTS AND AGENTS.</b>                             |                                     |                                      |   |                       |   |         |   |            |                        |           |            |
| Repairing Fort Constitution .....   |                                     |                                      |   |                       |   |         | 1   | 10         | 6                      |           | 17         |
| Preservation of islands in Boston harbor .....  |                                     |                                      |   |                       |   |         | 1   | 25         | 16                     |           | 42         |
| Repairing Plymouth beach, Mass. ....  |                                     |                                      |   |                       |   |         | 1   | 1          | 20                     |           | 22         |
| Repairing Fort Washington .....   |                                     |                                      |   |                       |   |         | 1   | 4          |                        |           | 5          |
| Improving the harbor of Mobile .....  |                                     |                                      |   |                       |   |         | 1   |            |                        |           | 1          |
| Improving the harbor of Ashtabula, Ohio. ....   |                                     |                                      |   |                       |   |         | 2   |            | 25                     |           | 27         |
| Removing obstructions at the mouth of Grand river .....   |                                     |                                      |   |                       |   |         | 1   | 4          | 15                     |           | 20         |
| Removing obstructions in Huron river .....  |                                     |                                      |   |                       |   |         | 2   | 8          | 18                     |           | 28         |
| Removing obstructions at the mouth of Cunningham creek .....  |                                     |                                      |   |                       |   |         | 1   |            | 25                     |           | 26         |
| Building piers at the mouth of Oswego harbor .....  |                                     |                                      |   |                       |   |         | 1   | 10         | 30                     |           | 41         |
| Building piers at Buffalo creek, N. Y. ....   |                                     |                                      |   |                       |   |         | 1   | 10         | 20                     |           | 31         |
| Building a pier at Steele's Ledge, Belfast, Me. ....  |                                     |                                      |   |                       |   |         | 1   |            |                        |           | 1          |
| Improving the harbor of Sackett's Harbor .....  |                                     |                                      |   |                       |   |         | 1   |            |                        |           | 1          |
| Building a pier at Dunkirk harbor, N. Y. ....   |                                     |                                      |   |                       |   |         | 1   |            | 30                     |           | 31         |
| Improving Cleveland harbor, Ohio .....  |                                     |                                      |   |                       |   |         | 1   |            |                        |           | 1          |



## STATEMENT—Continued.

|   | Officers of the corps<br>of engineers. | Officers of the corps<br>of Top'l Engrs. | Assist officers of the<br>line of the army. | Overseers and clerks. | Professors, teachers,<br>officers, and others. | Cadets. | Civil engineers, com-<br>miss'rs, superinten-<br>dents, and agents. | Mechanics. | Laborers, boatmen,<br>&c. | Soldiers. | Aggregate. |
|---|--|--|---|-----------------------|--|---------|---|------------|---------------------------|-----------|------------|
| Completing a pier at the entrance of La Plaisance<br>bay.....                               |  |  |   |                       |  |         | 1   |            |                           |           | 1          |
| Survey in Indiana in relation to canals.....  |  |  |   |                       |  |         | 5   |            | 16                        |           | 21         |
| Survey in Maryland and District of Columbia in<br>relation to canals.....                   |  |  |   |                       |  |         | 6   |            | 12                        |           | 18         |
| Continuation of the Cumberland road.....  |  |  |   |                       |  |         | 76  | 107        | 1,122                     |           | 1,305      |
| Surveying and locating Cumberland road.....   |  |  |   |                       |  |         | 1   |            | 6                         |           | 7          |
| Repairing the old Cumberland road.....  |  |  |   |                       |  |         | 1   |            |                           |           | 1          |
| Survey with a view to a connexion of the Ten-<br>nessee with the waters of the Alabama..... |  |  |   |                       |  |         | 2   |            | 8                         |           | 10         |
| Making a road from Detroit to Chicago.....  |  |  |   |                       |  |         | 1   |            | 75                        |           | 76         |
| Making a road from Miami to Detroit.....  |  |  |   |                       |  |         | 1   |            | 75                        |           | 76         |
| Making a road from Detroit to Fort Gratiot.....   |  |  |   |                       |  |         | 3   |            | 10                        |           | 13         |
| Making a road from Detroit to Saginaw.....  |  |  |   |                       |  |         | 3   |            | 10                        |           | 13         |
| Improving the navigation of the Ohio and Mis-<br>sissippi rivers.....                       |  |  |   |                       |  |         | 1   |            | 100                       |           | 101        |
| Removing obstructions in the Ohio river.....  |  |  |   |                       |  |         | 1   |            | 100                       |           | 101        |
|   |  |  |   |                       |  |         | 119   | 179        | 1,739                     |           | 2,037      |
| PROFESSORS, CADETS, ETC.  |  |  |   |                       |  |         |   |            |                           |           |            |
| At the Military Academy, West Point.....  |  |  |   |                       | 28   | 250     |   |            |                           | 95        | 373        |

## RECAPITULATION.

|   | Officers of the corps<br>of engineers. | Officers of the corps<br>of Top'l Engrs. | Assist officers of the<br>line of the army. | Overseers and clerks. | Professors, teachers,<br>officers, and others. | Cadets. | Civil engineers, com-<br>miss'rs, superinten-<br>dents, and agents. | Mechanics. | Laborers, boatmen,<br>&c. | Soldiers. | Aggregate. |
|---|--|--|---|-----------------------|--|---------|---|------------|---------------------------|-----------|------------|
| Corps of engineers.....                                       | 28                                     |  |   | 55                    |  |         |   | 356        | 1,917                     |           | 2,356      |
| Topographical Engineers.....                                  |  | 10                                       | 36  |                       |  |         |   |            | 134                       |           | 180        |
| Civil engineers, commissioners, superintend-<br>ents, &c..... |  |  |   |                       |  |         | 119   | 179        | 1,739                     |           | 2,037      |
| Military Academy.....   |  |  |   |                       | 28   | 250     |   |            |                           | 95        | 373        |
|   | 28                                     | 10                                       | 36  | 55                    | 28   | 250     | 119   | 535        | 3,790                     | 95        | 4,946      |

Extracted from the reports on file in the Engineer department.

BENJ. FOWLER, Clerk.



On the reduction of the army in 1821, General Macomb was retained with the rank of colonel and the brevet rank of major general. In May, 1821, he was assigned to the command of the corps of engineers—the Topographical Engineers—the Military Academy, and a large force of civil engineers, artisans and laborers, employed upon different military works, and held and exercised this command from June 1, 1821, until May 3, 1828. His command consisted of four distinct corps, and numbered nearly 5,000 men; while the proper command of a major general is a division, consisting of four regiments. It is the rational, and has long been the settled construction, and is in accordance with the precedents, that in case of staff and engineer officers, it is not necessary that their command should be composed of troops organized into regiments and companies, to entitle them to the pay and emoluments of the brevet rank; that both in number of corps, in numerical force, and in the extent of territory embraced by it, the command of General Macomb equalled that of a major general, and equalled, if it did not exceed, that of any officer who actually exercised the command and received the pay of a major general at that time; that under the act of Congress of April 16, 1818, entitled “An act regulating the pay and emoluments of brevet officers,” section 1, General Macomb was entitled to the full pay of a major general for the period of his aforesaid command; that although the senior of others who received the same brevet rank, and exercising a command equal, if not superior to theirs in importance, numbers, and extent of territory, General Macomb was the only officer who received the rank of brevet major general for services in the war of 1812 who did not also receive the pay and emoluments of that rank; that in 1827 General Macomb presented to the Secretary of War a claim for the difference between the pay of brigadier general, which had been allowed him, and that of major general, from the date of his appointment to his aforesaid command; that failing to get the claim allowed by the Secretary of War or Comptroller of the Treasury, he applied to Congress at the 2d session of the twenty-second Congress; that in 1834, by a resolution of the House of Representatives, it was referred to the Secretary of War, who was proceeding to act upon it, when the President directed all accounts of the kind to be referred to Congress; that at the 2d session of the twenty-fifth Congress said claim was passed in the House of Representatives, and rejected in the Senate; that General Macomb continued to urge it upon the War Department, without success, until his death.

Amount, \$13,573 17.

## IN THE COURT OF CLAIMS.

No. 507.—RUFUS L. BAKER *vs.* THE UNITED STATES.*Adopted in the case of Harriet B. Macomb.*

BRIEF OF THE DEPUTY SOLICITOR FOR THE UNITED STATES.

This is a claim for brevet pay.

The petitioner held, during the whole or the greater part of the period embraced by this claim, two commissions, by one of which the President did *appoint him captain of ordnance in the service of the United States*, and by the other did *confer on him the rank of major by brevet in the army of the United States*. (See copies of his commissions.)

The act "regulating the pay and emoluments of brevet officers," approved April 16, 1818, enacts, "that officers of the army who have brevet commissions shall be entitled to and receive the pay and emolument of their brevet rank when on duty, and having a command according to their brevet rank, and at no other time."

The petitioner alleges that he was on duty, and had a command according to his brevet rank, from the 1st of May, 1828, to the 31st of October, 1834; that during this period he (Baker) was not permitted to receive the pay of his brevet rank.

The command held by the petitioner during the period in question was that of Allegheny arsenal, a military establishment belonging to the Ordnance department, and at which there were employed during the period charged for a number of men, varying from 62 to 83, some of whom may have been enlisted men, and others were ordinary hired men employed by the day or month under contract.—(Report of Ordnance department, December 12, 1857.)

For the United States it is contended, that in order to entitle the petitioner to recover, he must have fulfilled two conditions under the act of 1818:

- 1st. He must have been on duty according to his brevet rank; and
- 2d. He must have had a command according to his brevet rank.

And it is also contended that he fulfilled neither of these conditions.

*Of rank as distinguished from office.*

¶ In the military establishment officers generally, but not always, have rank.

Military storekeepers (keepers of military stores) are commissioned officers, and form part of the military establishment, (act March 2, 1821, chap. 13, sec. 9, 3 Stat. 615,) and are amenable to the rules and articles of war, (art. 36,) yet have no rank. Paymasters in the army were without rank until it was conferred upon them by the act of March 3, 1847, chap. 61, sec. 13, (9 Stat., 184;) and medical officers first received rank by the act of February 1, 1847, chap. 8, sec. 8, (9 Stat., 123.)

Rank is generally annexed to the office. The adjutant general, commissary general, paymaster general, and surveyor general have the rank of colonel; the quartermaster general has the rank of brigadier general. But rank may depend upon the duties performed, as under the act of March 3, 1813, chap. 52, secs. 1 and 2, (2 Stat., 819,) eight quartermaster generals were appointed, of whom the one "attached to the principal army" was to rank as a brigadier general, the others as colonels.

This distinction is presented by the two commissions in this case: the one *appoints*; the other *confers rank*.

*Of brevet rank as distinguished from other rank.*

The army of the United States consists of a fixed number of officers and men constituting an organization, which will be found detailed in every annual Army Register.

The number of these officers cannot be increased without law; each holds an office, and his commission expresses the office which he holds.

To each of these offices is generally attached a certain rank, sometimes expressed in the title of the office, as colonel of the engineers; and sometimes separately given by law, as adjutant general with the rank of colonel.—(Act of March 2, 1821, sec. 6, 3 Stat., 615.)

Besides the commissions which confer offices, with the rank attached thereto, the President can confer upon such officers additional commissions which confer rank only. Such additional commissions are styled brevet commissions. Thus, the late Adjutant General Jones held the office of adjutant general with the rank of colonel, in his own department, attached thereto, and at the same time he held by brevet the rank of major general in the army.

These brevet commissions are not limited in number by law, as are those commissions which confer places in the organization of the army; but may be multiplied to any extent by the joint action of the President and the Senate under the acts of July 6, 1812, chap. 137, sec. 4, (2 Stat., 784,) and April 16, 1818, chap. 64, sec. 2, (3 Stat., 427.)

A brevet commission is a commission "in the army," not in any particular regiment or corps of the army. All brevet commissions are of the same tenor. A captain of ordnance, a captain of engineers, a captain of infantry, and a captain of cavalry, if commissioned majors by brevet, receive the same commission—that of "major by brevet in the army of the United States." Their brevet commissions neither recognize, nor confirm, nor create any difference between them on account of their previous rank. By brevet they are all majors and majors only.

The brevet rank is army rank, as distinguished from rank in regiments or corps, is well illustrated by a comparison of art. 24, sec. 13, and art. 2, sec. 14, of the Articles of War, adopted by the continental Congress, September 20, 1776.—(1 Journals, 489.) The first cited article, speaking of rank, directs that officers having brevets take place on courts-martial composed of different corps according to their brevets. The last cited article, speaking of courts-martial, directs that officers of different corps or courts-martial take the same rank

which they hold *in the army*, Both provisions apply to the same state of facts, and are necessarily intended to be the same in sense; and the phrase *rank in the army*, used in the last, includes *brevet rank* as used in the first.

*Of the incidents of brevet and other rank.*

1st. *As to command.*—The commission by which an officer holds a place or “is mustered” in his own corps gives him, by its terms, the right to command in that corps; out of the corps his rights are defined by statutes—that is to say, by the 62d Article of war as enacted in “An act for establishing rules and articles for the government of the armies of the United States, approved April 10, 1806,” (2 Stat., 359,) which is in the following words:

“ART. 62. If upon marches, guards, or in quarters, different corps of the army shall happen to join and do duty together, the officer highest in rank in the line of the army, marine corps, or militia, by commission there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President of the United States according to the nature of the case.”

A brevet commission entitles an officer to precedence and command in certain cases prescribed by one of the articles of war, which is in the following words:

“ART. 61. Officers having brevets or commissions of a prior date to those of the regiment in which they serve may take place in courts-martial, and on detachments, where composed of different corps, according to the ranks given them in their brevets or dates of their former commissions; but in the regiment, troop, or company to which such officers belong, they shall do duty and take rank, both in courts-martial and on detachments, which shall be composed of their own corps, according to the commissions by which they are mustered in the said corps.”

In art. 3, p. 16, of the edition of Army Regulations, revised by General Scott and published by the War Department in 1825, is found the following construction of this article:

“18. The terms regiment and corps, as used in the 61st article of war, will be considered as synonymous.”—(Decision of the President of the U. S., announced in orders, July 1, 1816.)

A brevet commission also renders an officer eligible, by the assignment of the President, to exercise command over permanently constituted bodies of troops, to the same extent as if such bodies were “detachments” within the above-cited articles of war. Thus, General Jesup being quartermaster general with the rank of brigadier general, and not as such invested with the command of troops, yet having a brevet commission as major general, commanded as major general, by assignment of the President, a separate army in Florida.

2d. *As to pay.*—A brevet commission does not of itself entitle an officer holding it to pay. It might and probably would be otherwise if the brevet commission conferred an office instead of rank merely.

The absence of pay was formerly so prominent a characteristic of

brevet rank that in James' Military Dictionary, the best extant, it is made the distinguishing ground of his definition, as follows :

"*Brevet rank* is a rank in the army higher than that for which pay is received. It gives precedence (where corps are brigaded) according to the date of the brevet commission.

"*The brevet*, a term used to express general promotion, by which a given number of officers are raised, from the rank of captain upwards, without any additional pay, until they reach the rank of major general, when, by a late regulation, they become entitled to a quarterly allowance."—(Edition of 1816.)

I find no act earlier than that of July 6, 1812, (2 Stat., 784,) giving brevet pay. So far as I can learn from the journals of the continental Congress, by the aid of the index, brevet pay was allowed only in exceptional cases, and brevets seem to have been conferred simply as honorable marks of distinction, as appears from the following resolutions, which are all that are pointed out in the index :

Resolution of April 30, 1778. (2 Journal, 532,) providing that brevets shall give no rank in the regiment, troop, or company, but only on detachments and courts-martial ; nor shall they entitle officers to additional pay.

Resolution of January 13, 1779, (3 Journal, 182,) giving brevet rank to French volunteers about to return to France.

Resolution of February 13, 1779, (3 Journal, 200,) to the same effect.

Resolution of September 10, 1783, (4 Journal, 260,) informing the paymaster general that brevet commissions do not entitle to pay or emoluments, unless the same be expressed in the resolution granting such commissions.

For pay, then, brevet officers must look to statutory provisions and army regulations in accordance therewith.

*Of the statutes granting brevet pay and regulations auxiliary thereto.*

The provision, act of July 6, 1812, chapter 137, sec. 4, (2 Stat. 784,) respecting brevet pay, is as follows ; "Nothing herein contained shall be so construed as to entitle officers so brevetted to any additional pay or emoluments, except when commanding separate posts, districts, or detachments, when they shall be entitled to and receive the same pay and emoluments to which officers of the same grades are now or hereafter may be allowed by law."

The provision in the act of April 16, 1818, chap. 64, sec. 1, (3 Stat., 427,) is as follows :

"The officers of the army who have brevet commissions shall be entitled to and receive the pay and emoluments of their brevet rank when on duty, and having a command according to their brevet rank, and at no other time."

The following regulations have been issued from time to time by the President, to give effect to the act of 1818, and are all that are found in the successive editions of General Regulations for the Army.

The first is taken from the edition of Army Regulations promul-



gated in 1820, page 125 ; but was made, as the date attached to it shows, immediately after the passage of the act in 1818.

[May 8, 1818. "Brevet officers shall receive the pay and emoluments of their brevet commissions when they exercise command equal to their brevet rank ; for example : a brevet captain must command a company ; a brevet major and a brevet lieutenant colonel a battalion ; a brevet colonel a regiment ; a brevet brigadier general a brigade ; a brevet major general a division."]

In the regulations of 1821 the same order, in the same words, is found in par. 18, of art. 71.

In the regulations of 1825, (revised by Major General Scott,) the provision on this subject is found in article 71, as follows :

"1124. Brevet officers shall receive the pay and emoluments of their brevet commissions when they exercise command equal to their brevet rank ; for example : a brevet captain must command a company ; a brevet major and a brevet lieutenant colonel a battalion ; a brevet colonel a regiment ; a brevet brigadier general a brigade ; a brevet major general a division."

In the edition of 1834 the regulation is as follows :

"Officers who have brevet commissions shall be entitled to receive their brevet pay and emoluments when on duty, under the following circumstances : a brevet captain when commanding a company ; a brevet major when commanding two companies or when acting as major of the regiment ; a brevet lieutenant colonel when commanding at least four companies or when acting as lieutenant colonel of the regiment ; a brevet colonel when commanding nine companies of artillery or ten of infantry or dragoons, or a mixed corps of ten companies, or when commanding a regiment ; a brevet brigadier general when commanding a brigade of not less than two regiments or twenty companies ; a brevet major general when commanding a division of four regiments or at least forty companies ; a brevet officer when assigned to a particular duty or command according to his brevet rank, although such command be not in the line, provided his brevet allowances are recognized in the order of assignment."

"To entitle officers to brevet allowances while acting as field officers of regiments according to their brevets, they must be recognized at general headquarters as being on such duty, and the fact announced accordingly in general orders."

In the edition of 1835 (p. 194) the regulation is identical with that just cited.

In the edition of 1841 the regulation is as follows :

"1255. Officers who have brevet commissions shall be entitled to receive their brevet pay and emoluments when *on duty and having a command* according to their brevet rank as follows :

"1. A brevet captain, when commanding a company.

"2. A brevet major, when commanding two companies or when on duty as major of the regiment.

"3. A brevet lieutenant colonel, when commanding at least four companies or when on duty as lieutenant colonel of the regiment.

"4. A brevet colonel, when commanding a regiment or at least two companies.



"5. A brevet brigadier general, when commanding a brigade of not less than two regiments or twenty companies.

"6. A brevet major general, when commanding a division of four regiments or at least forty companies.

"7. A *brevet* officer when assigned by the special order of the Secretary of War to a particular duty and command according to his brevet rank, although such command be not in the line: *provided* his brevet allowances are recognized in the order of assignment.

"1256. To entitle officers to *brevet* allowances while acting as field officers of regiments, according to their brevets, they must be recognized at general headquarters as being on such duty, and the fact announced accordingly in general orders."

In the last edition of regulations, issued January 1, 1857, the department gives a construction to the act of 1818, by par. 1176 and 1177, in the following words:

"1176. Officers are *on duty and have a command according to their brevet* rank only when assigned to their brevet rank by the President, with the appropriate actual command composed of different corps, or when serving on detachments composed of different corps with such appropriate command. But in the regiment, troop, or company to which officers belong, they do duty and draw pay according to the commissions by which they are mustered in their own corps.

"1177. The following are the appropriate commands to each grade:

"For a captain, at least a company.

"For a major, at least 2 companies.

"For a lieutenant colonel, at least 4 companies.

"For a colonel, at least 1 regiment or 10 companies.

"For a brigadier general, at least 2 regiments or 20 companies.

"For a major general, at least 4 regiments or 40 companies.

"For a lieutenant general, at least 8 regiments or 80 companies."

### *Of the construction of the act of 1818.*

The early regulations in the foregoing series are often referred to as giving a construction to the act of 1818, and giving it a construction opposed to that for which I contend in this case.

The regulations in question may indicate the views of the then executive as to the construction of the statute, and may even in form seem to give it a construction, but such was not their purpose.

"The purpose of these regulations," [of 1818 and 1820,] says Mr. Attorney General Wirt, (1 Opinions, 549,) "then is merely to supply what positive legislation had wholly omitted, not to contradict it in anything which it had enacted."

The statutes had already designated the cases in which brevet officers would be on duty according to their brevet rank, but no statute had determined their commands. This was to be determined by regulations.

When then the regulations speaks only of certain commands necessary to entitle officers to brevet pay, we are not to understand that no other condition is to be fulfilled.

I am not aware that the point which I shall make has ever been ex-

pressly decided by the department. I cannot find that it has been. But even if the executive department had so decided, and if the decision had been acted upon ever since the passage of the act, that fact should not be suffered to control the judgment of this Court. Upon this point I rely upon the following language of the Supreme Court in *The United States vs. Freeman*, (3 How., 564,) in regard to claims for brevet pay under the act of 1818, and in which the construction which had been given by the executive departments to the act of 1818, from its passage down to the year 1846, was reversed. The Court said: "Though what has been differently done is binding upon the government and cannot be recalled to the pecuniary disadvantage of any officer who may have received brevet pay and emoluments not according to the act of 1818, *no erroneous practice under it, of however long standing, can justify the allowance of a claim contested by government in a suit contrary to the true meaning and intent of that act.*"

And the rule is equally applicable to the other side, for the same Court said, in the *United States vs. Dickson*, (15 Peters, 141:)

"The construction given to the laws by any department of the executive government is necessarily *ex parte* without the benefit of an opposing government in a suit where the very matter is in controversy; and when the construction is once given, there is no opportunity to question or revise it by those who are most interested in it as officers deriving their salary and emoluments therefrom, for they cannot bring the case to the test of a judicial decision. It is only when they are sued by the government for some supposed default or balance that they can assert their rights. Their acquiescence, therefore, is almost from a moral necessity when there is no choice but obedience as a matter of policy or duty. But it is not to be forgotten that ours is a government of laws and not of men; and that the judicial department has imposed upon it, by the Constitution, the solemn duty to interpret the laws in the last resort; and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender or to waive it. The present question, then, must be decided upon the same principles by which we ascertain the interpretation of all other laws: by the intention of the legislature as it is to be deduced from the language and the apparent object of the enactment," (pp. 161, 162.)

*The act of 1818 requires that the brevet officer be on duty according to his brevet rank.*

The claimant denies that this condition is imposed by the act, and contends that the act requires the brevet officer to be "on duty" simply without further qualification. He reads the act as requiring that the brevet officer have a command according to his brevet rank, and also that he be on duty.

The answer to this is, that all officers who have a command are on duty; no officer commands who is off duty; and therefore the condition that the officer have a command includes the condition that he be on duty; so that the construction contended for by the claimant makes surplusage of the words "on duty," and allows but one con-

dition where the statute purports to make two. This is contrary to the established rules of construction, and cannot be allowed, if it may be avoided, by any other reasonable construction.

On the other hand, the construction I contend for gives a special effect to the words in question. An officer may be on duty according to his brevet rank and have no command; this is the case when he sits on courts-martial with officers of other corps; he takes place according to his brevet rank under the 61st article of war—but has no command. An officer may have a command according to his brevet rank and not be on duty according to his brevet rank; a major having the brevet rank of colonel may, in the absence of his superior officers, command his own regiment; he has a command according to the rank of a colonel, but, being in his own corps under the 61st article of war, must do duty only according to the commission by which he is mustered therein—that of major; he commands the regiment because, as major, he is superior in rank to every other person in it; not because he is doing duty in his rank of colonel.

Each of these conditions applies to a state of facts of frequent occurrence. Brevet officers are daily sitting upon courts-martial composed of officers of different corps; and brevet officers daily find themselves in commands belonging to the higher officers of their own regiments. Congress may well be supposed to have contemplated this notorious state of facts, and to have intended to deny brevet pay to any officer who fulfilled but one of these conditions, and to give it to those only who fulfilled both. I maintain that Congress has used apt words to express that intention.

Again, the expression used in this act is almost identical in terms, and is identical in sense, with the expression used in the 61st article of war. When, in that article, a captain is directed to “do duty and take rank according to the commission by which he is mustered,” no one has ever doubted that the injunction is to do duty *as captain*; that the intent is not simply to command him to do duty, to be busy, not to be idle, but to prescribe the rank in which he shall do duty. The purpose of the article is not to guard against idleness, but to determine rank. So, in the act of 1818, I contend that the same expression is not meant simply to prohibit idle men—men not on duty—from getting brevet pay, but to determine the grade in which they must be serving in order to entitle them to pay.

*The petitioner was not on duty according to his brevet rank.*

While officers are serving in their own regiments or corps—in which case, under the 61st article of war, they “do duty and take rank \* \* \* according to the commissions by which they are mustered in the said corps”—such officers cannot fulfil the conditions imposed by the act of April 16, 1818.

In other words: the petitioner, while *doing duty and taking rank according to the commission of captain by which he was mustered in the ordnance corps*, could not at the same time be *on duty and having a command according to his brevet rank of major in the army*.

To do duty is to perform certain official acts; to exercise the func-

tions of an office; and the acts which the petitioner did by virtue of his commission as captain, he could not have done by virtue of his commission as major.

*The petitioner had not a command according to his brevet rank.*

The second condition required by the act to entitle an officer to brevet pay is, that he must have had a command according to his brevet rank. The petitioner must show that he had a command according to the brevet rank of major. He shows that he was in command of Alleghany arsenal, and produces written opinions of high officers to the effect that this was equal to the command of a major of ordnance. Among these officers was the Secretary of War, Mr. Poinsett, who allowed him brevet pay for the same species of service from and after the 1st of August, 1837; but while expressing the opinion that he was equally entitled to it for the preceding period, declined to order payment.

In considering what is the command appropriate to a given rank, we must look beyond the naked rank. Rank alone does not determine command; if it did, all officers having the same rank would necessarily have the same appropriate command. But this is not the case. A paymaster has the same *rank* as a major of infantry, and a major of infantry has the same rank as major of engineers; yet the appropriate command of one of these officers is not that of another. All have the same rank, but have not the same command.

If, then, the act of 1818 means to say that an officer, being by brevet a major, and having a command according to the rank of major, shall be entitled, &c., &c., it contains a latent ambiguity; for there is no command according to the rank of major *qua major*; or if there be, it is that of a major of infantry, according to the ruling of the Supreme Court in the case of *Wetmore vs. The United States*, (10 Peters, 647.) In that case, a paymaster being entitled to "the pay and emoluments of major," claimed those of major of cavalry; but the Court said, (p. 655,) "when the law speaks of a *major*, the term is most naturally considered as having been used in reference to such officers of that rank, and of such regiments, actually being of the army or to the army as it exists; and when it is used without *regimental designation implies a body of infantry*; this arm of defence having been the main body of modern armies." Thus, the claimant could derive no benefit from such a construction of the act as would require a command according to rank generally, not brevet rank specially.

But the act does require a command according to his *brevet* rank; and what is the effect of this limitation? If a soldier were asked what is the appropriate command of a colonel of infantry, he would say a regiment; and if he were asked what is the appropriate command of the colonel of ordnance, he would say the ordnance corps. In each case he would look beyond the naked rank, and consider the description of force in which the rank is held. And so in this case must we. I maintain that the difference between the commissions of major by brevet in the army and major of ordnance is of the same

nature as the difference between the commission of major of infantry and major of ordnance; and that the condition of the act of 1818, requiring a command according to *brevet* rank, is as specific as if it had required a command in a certain *arm*. If this be so, the petitioner gains nothing by his attempt to show that his command was that of a major of ordnance, since he does not show that the commands of ordnance officers and brevet officers are the same.

How, then, should the appropriate commands of brevet officers be ascertained? I answer by statute, if statutes had been passed; and as the statutes are silent, then by the regulations of the President—the commander-in-chief of the army. That he has authority to assign duties to officers has been held by the Supreme Court in the case of *Gratiot vs. The United States*, (4 How., 80,) and in that case the Court said they had often held that army regulations have the force of law. And this mode of determining the commands of brevet officers was resorted to by the Supreme Court in the case of *United States vs. Freeman*, (3 Howard, 564,) where the Court held generally (p. 566) that officers were entitled to brevet pay when exercising command according to the provisions of the regulations in force from time to time. The case came up on a certificate of division from the circuit court of the United States for the district of Massachusetts; and the district court, in proceeding, after having received the answers of the Supreme Court, ruled as follows: (*United States vs. Freeman*, 1 W. and M., 45.)

“The act of April 16, 1818, ch. 64, 3 Stat., 427, on which the claim depends, requires that brevet officers, in order to receive pay as such, must be then on duty, and having a command according to their brevet rank, and at no other time.

“What, then, constitutes a command according to their brevet rank?

“By the Army Regulations of 1825, which governed this question till 1836, (3 How., 564,) it was provided that a lieutenant colonel by brevet must be considered to exercise a command equal to his brevet rank when he commanded a battalion.

“We entertain an opinion that whatever meaning may at times be affixed to the word *battalion*, it must by the spirit of this regulation, and the laws connected with it, be construed to mean here, at least, two organized companies, with their requisite officers as well as men.

\* \* \* \* \*

“In 1836 a new order was issued by the War Department requiring a still larger command for a brevet lieutenant colonel, in order to entitle him to extra pay, as ‘four companies instead of two,’ or to command as lieutenant colonel of a regiment. A like construction must be given to the word *company* here, in order to come within the spirit and reason of the allowance. It should be an organized company, and have a suitable number of officers as well as men.”

Both the courts recognize the authority of the department to determine the command of a brevet officer, and they refer to the regulations alone to determine the command in the case before them. Both courts cite regulations enlarging or varying the commands of brevet officers. The Regulations of 1836, says the district court, required a larger



command than the Regulations of 1825, for a brevet lieutenant colonel; but if commands of brevet officers are to be determined by reference to commands in regiments or corps, how could the former be enlarged or diminished without varying the latter? How could the appropriate command of a brevet lieutenant colonel be at one time two companies, and at another four, when a lieutenant colonel's command in the line remained the same at both periods?

We must look, then, to regulation alone, in the absence of statute, to determine the amount and description of force which constitute the appropriate command of brevet officers. The regulation in force during the period covered by this claim was that above cited from the edition of Army Regulations of 1825, revised by Major General Scott, and it determines the appropriate command of a brevet major to be a battalion. There is no pretence that the petitioner had command of a battalion; all that is shown is, that the average number of men under his direction, from 1828 to 1834, was ninety, exceeding the number in a company, but not equal to two companies, still less to a battalion, (see report from the Ordnance office of February, 1838;) nor were they organized as a battalion, nor could they have been, as some were hired men on daily wages, (report of December 12, 1857.)

But the claimant not only fails to show not only that he had the command presented for the brevet rank of major, he fails even to show by *competent evidence* that the command he had was equal to, or appropriate to, or according to, the rank of major in the ordnance corps, or in any corps.

He produces nothing on this point but the certificate of Mr. Secretary Poinsett, which affirms that Major Baker's command was equal in its importance, as well as in its numerical force and responsibility, to the command of a major of ordnance.

Importance and responsibility are subjects of opinion and judgment. They are incorporeal qualities, and no one will pretend that they form any part of the elements of a command. A company is but a captain's command, whether it guard the pass of a Thermopylæ, or parade in the park on a gala day. The only tangible portion of the allegation is as to the numerical force; this force is shown by evidence, not before Mr. Poinsett, to have been partly composed of hired, not enlisted men, and it is a question of law, not to be determined by evidence, whether such hired men can constitute a command. The case above cited from 1 W. & M. determines that they cannot. Moreover, the only proper way to prove the equality of numerical force would be to state what numerical force a major of ordnance appropriately commands, and then to prove that the claimant commanded such a force. Mr. Poinsett states neither the appropriate command of a major of ordnance nor the actual command of the claimant. It states only a conclusion which is incapable of being contradicted.

*Of the mischiefs which the act of 1818 was intended to remedy.*

To attempt to regulate pay according to the comparative importance of the duties performed instead of the command held, would introduce a thousand changing elements into the determination of the



question, instead of the simple and invariable rule contemplated by the act of 1818—that is, the description of the military body under the officer's command. It would introduce a mode of determination infinitely less reliable, and much more subject to abuse, than that which existed before the act of 1818 was passed, and which, on account of the abuses practiced under it was superseded.

The 9th section of the act of July 6, 1812, gave brevet pay to officers commanding separate posts, districts, or detachments. Under this act, says Mr. Attorney General Wirt in his opinion of December 29, 1821, (1 Opinions, 525,) “separate posts and districts were created and multiplied, as if to open a wide theatre for its more extensive operation; and there were few, if any, brevets in the army which did not draw brevet pay.” And so says Mr. Berrien in his opinion of July 18, 1829, (2 Opinions, 231.) The President, under the act of 1812, “had thus the power, in the arrangement and distribution of the army, to increase the amount of brevet pay by multiplying the number of separate posts. In point of fact, I understand that shortly after the termination of the late war, this power was freely resorted to as a means at the disposal of the Executive by which merit might be rewarded.”

If this was the mischief to be remedied, it requires no argument to show that the construction which the claimant seeks to place upon the act of 1818 will not affect the object. Even under the act of 1812 some limit was imposed on the liberality of the Executive, by restricting the allowance of brevet pay to officers having certain defined military commands; but the construction contended for includes all these commands, (because all posts, districts, and detachments, may be deemed important commands,) and it includes, besides, all other employments which, in the opinion of a liberal Secretary of War, may be deemed to be commands, and to be of a certain degree of importance—such as the charge of a survey, the construction of a fort, or the building of an aqueduct—officers so employed have often drawn brevet pay.

In the foregoing view of the questions involved in this case I have referred to no decisions of the War Department, or opinions of the Attorneys General upon individual cases. The decisions of the former depend greatly on the notions of liberality entertained by the Secretary for the time being, or on the personal merits of the claimant; and the series is therefore too contradictory to be cited here as authority, while the opinions of the Attorneys General are equally unreliable, since they concern questions which, Mr. Wirt said, (1 Opinions, 547,) “do not depend on positive law only, but call for an intimate knowledge of army regulations and organization which constitutes no part of the service of my profession.” In regard to the opinions of Attorneys General, I will only say that I have found no opinion which acknowledges any other guide or rule in the determination of questions of command than the statutes and army regulations.

JNO. D. MCPHERSON,  
*Deputy Solicitor.*

## COURT OF CLAIMS.

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 JUNE 6, 1859.
 

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HARRIET B. MACOMB, Administratrix of ALEXANDER MACOMB, deceased,  
*vs.* THE UNITED STATES.

BLACKFORD, J., delivered the opinion of the Court.

This case is similar in principle to that of *Rufus L. Baker vs. The United States*, the opinion in which, adverse to the claim, has just been delivered. The opinion of the Court for the reasons given by a majority of the Court in said case of Mr. Baker is, that the claimant in the present case is not entitled to recover.

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 IN THE COURT OF CLAIMS.
 

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 JUNE 6, 1859.
 

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RUFUS L. BAKER *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the Court.

This is a claim for the difference between the pay and emoluments of a captain of ordnance and those of a major by brevet, from the 1st of May, 1828, to the 31st of October, 1834. The amount claimed is not, in terms, stated in the petition.

The claimant was commissioned a captain of ordnance in the service of the United States on the 1st of June, 1832, to rank as such from the 30th of May of that year. Whilst he was such captain, to wit, on the 1st of September, 1829, the rank of major by brevet in the army of the United States was conferred on him, to rank as such from the 21st of May, 1827.

During the time for which this claim is made, viz: from the 1st of May, 1828, to the 31st of October, 1834, the claimant was a captain of ordnance, as aforesaid, and had the rank of a major by brevet, as aforesaid.

The question which this case presents is: was the claimant, under the circumstances of the case, entitled to the pay and emoluments of a major in the army at any time during the aforesaid period?

The act of Congress of 1818 on the subject is as follows:

“That officers of the army who have brevet commissions shall be entitled to and receive the pay and emoluments of their brevet rank when on duty, and having a command according to their brevet rank, and at no other time.”—(3 Stat. at L, 427.)

The following army regulations of 1825, in force during said period, is as follows:

"Brevet officers shall receive the pay and emoluments of their brevet commissions when they exercise command equal to their brevet rank; for example, a brevet captain must command a company; a brevet major and a brevet lieutenant colonel, a battalion; a brevet colonel, a regiment; a brevet brigadier general, a brigade; a brevet major general, a division."—(See 3 Howard, 559, 566.)

The above act of 1818 and said army regulation of 1825 govern this case. They show that, to establish this claim, the claimant must prove that during the period embraced by the claim he was on duty and had the command of a battalion in the army.

Now, what was the command of the claimant during said period? The following letters are the only evidence on the subject:

"ORDNANCE OFFICE,  
"Washington, February 1, 1838.

"SIR: It appears from the records of this office that the number of officers and men composing your command at the Alleghany arsenal, during the several years herein stated, was as follows, viz:

|                        |     |
|------------------------|-----|
| "In the year 1828..... | 62  |
| 1829.....              | 83  |
| 1830.....              | 61  |
| 1831.....              | 47  |
| 1832.....              | 50  |
| 1833.....              | 55  |
| 1834.....              | 55  |
| 1835.....              | 61  |
| 1836.....              | 117 |
| 1837.....              | 145 |

"And that a number estimated at the lowest at thirty men, and not included in the foregoing reports to this office, were likewise attached to your command during the years 1830, '31, '32, '33, '34, and '35, thus augmenting your command during the whole time to a force exceeding the command of a captain. The foregoing numbers vary in some respects from those stated in my letter to the Secretary of War of the 2d of January last, owing to the omission in that letter of the officers of your command.

"Very respectfully, &c.,

"G. BOMFORD,  
"Colonel of Ordnance.

"Major R. L. BAKER."

"ORDNANCE OFFICE,  
"Washington, December 12, 1857.

"SIR: I have to acknowledge your letter of the 11th instant, in relation to the number of men under the command of Major R. L. Baker, at Alleghany arsenal, in the years 1828 to 1837, both inclusive, and, in reply, have to state that the number of men reported in the letter alluded to by you from the colonel of ordnance to Major

Baker, of February 1, 1838, embraced all the persons under his orders, hired as well as enlisted.

"Respectfully, &c.,

"A. K. CRAIG,  
"Colonel of Ordnance.

"JOHN D. McPHERSON, Esq.,  
"Deputy Solicitor Court of Claims, Washington."

All that these letters show is, that during the years in question, namely, from 1828 to 1834, the claimant had a command at Alleghany arsenal; that the highest number of officers and men under his command there in any one of those years was ninety-one; that the number in the other years ranged from seventy-seven to eighty-five; that some of the men were enlisted and some hired, but how many of each kind is not stated.

There is nothing in those facts to show that the claimant had the command of a battalion during any part of said time.

A case somewhat similar to the present one occurred in the circuit court of the United States for the district of Massachusetts. The defendant, in a suit against him by the government, claimed the brevet pay of a lieutenant colonel. The court, in an opinion against the claim, said: "By the army regulations of 1825, which governed this question till 1836, (3 How., 564,) it was provided that a lieutenant colonel by brevet must be considered to exercise a command equal to his brevet rank when he commanded a battalion. We entertain an opinion that whatever meaning may, at times, be affixed to the word battalion, it must, by the spirit of this regulation and the laws connected with it, be construed to mean here, at least, two organized companies, with their requisite officers as well as men."—(United States vs. Freeman, 1 Woodbury and Minot, 45.)

The claimant, to show that his command at said arsenal entitled him to the pay and emoluments claimed, relies on a decision of Mr. Poinsett, Secretary of War. That decision is copied into the petition. The main part of it is as follows:

"It appears that the command held by Major Baker from the year 1828 to the present time is one of the first importance in his corps, and fully equal, in its numerical force and responsibility, to the command of a major of ordnance; and accordingly the department sanctioned his application for the pay and allowances of his brevet rank from the 1st of August, 1837, but deemed it proper that a retrospective allowance, involving an amount not included in previous estimates and appropriations, should receive the sanction of Congress."

We do not know what evidence was before Mr. Poinsett, and, of course, can form no opinion as to the correctness of his decision relative to the numerical force of the claimant's command. If, however, the Secretary means, by the word "responsibility," anything in addition to numerical force, we think that he is, so far, mistaken. The claimant's responsibility, arising from the value of public property in his charge, cannot affect the case. The act of Congress of 1818, when speaking of a command according to brevet rank, means a command of men, not a care of public property; and the army regulation of

1825, when speaking of a command equal to brevet rank, means a command of men. And said act and regulation both mean a command of men belonging to the army.

The claimant's brevet rank did not, of itself, entitle him to the pay and emoluments of a major. Notwithstanding his brevet commission, he remained limited to the command and pay of a captain under his lineal commission until he should be assigned, by proper authority, to the command of a battalion in the army, and until, in consequence of such assignment, he should actually exercise that command, and then only for the time of its actual exercise.

But there is no evidence that the claimant, either with or without orders, ever commanded a battalion, that is, at least two organized companies. The whole number of officers and enlisted men and hired men under him during any of the time aforesaid did not exceed ninety-one; and, for aught that appears, two-thirds or more of the men may have been mere hired laborers for daily or monthly wages. It is impossible, therefore, from the evidence, to say that the claimant had under him, at any portion of the time referred to, any number of enlisted men which it was not his duty to command as a captain of ordnance.

It is objected by the solicitor that, at all events, there is no ground for this claim, because the claimant was acting in his own corps, but we have not found it necessary to examine that point.

It is the opinion of the Court that the claimant has no cause of action.

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IN THE COURT OF CLAIMS

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JUNE 6, 1859.

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HARRIET B. MACOMB, administratrix, *vs.* THE UNITED STATES.

LORING, J.

General Macomb was major general by brevet, and colonel in the Corps of Engineers. He was, by general orders dated May 17, 1821, (exhibit B,) appointed, by his title of major general, to the command of the Engineer Corps, the Topographical Engineers, (in the same general orders attached to the Engineer Corps,) the Military Academy at West Point, and to a force of civil engineers, artisans, and laborers employed on different military works. He held this command from June 1, 1821, to May 23, 1828, and it consisted numerically of 4,946 men, of whom 4,325 were mechanics and laborers. General Macomb received for this command the pay and emoluments of a brigadier general; it is alleged that he was entitled to the pay and emoluments of his brevet rank of major general, and the claim is for the difference



between the pay of a brigadier general and of a major general for the time of service stated, and amounting to \$13,573 17, and interest.

It was contended by the deputy solicitor that General Macomb's command was in his own corps, and, therefore, was not according to his *brevet* rank. I am of opinion that this objection is sustained by the evidence, and is conclusive in this case and all like it.

The case is governed by the statute of April 16, 1818, entitled "An act regulating the pay and emoluments of brevet officers," and the first section of which is in these words: "That the officers of the army who have brevet commissions shall be entitled to and receive the pay and emoluments of their brevet rank, when on duty, and having a command according to their brevet rank, and at no other time."—(Sec. 1, 3 Stat., 427.)

I understand the purpose of this statute to be to give to officers having brevet rank its pay and emoluments when they are actually exercising that rank and at no other time. Such officers have two ranks, differing in degree and authority, and justice to them requires that they should be paid according to the rank and authority they are called upon to exercise. On the other hand, when such officers are exercising only that authority which is within the scope of their rank in their corps, which by that rank it would be their duty to exercise if they had not brevet commissions and for which their brevet commissions are not required, there is no reason that they should be paid according to such brevet commissions.

For this reason the law has always been that brevet commissions gave to officers no rank or command *in their own corps*.

The resolutions of the continental Congress, establishing rules and articles of war, September 20, 1776, art. 24, sec. 13, and April 30, 1778, art. 2, sec. 14, gave to brevet officers rank and command according to their brevet commissions when on courts-martial and commanding detachments composed of different corps, and excluded them from rank and command according to their brevet commissions in their own corps.

And the statute of April 10, 1806, c. 20, 2 Stat. at Large, 359, entitled "An act for establishing rules and articles for the government of the armies of the United States," enacts, in its 61st article, in relation to brevet officers, the rule which had always obtained, viz: "that in the regiment, troop, or company to which such officers belong, they shall do duty and take rank, both in courts-martial and on detachments, which shall be composed only of their own corps, according to the commissions by which they are mustered in the said corps."

Such was the nature and incident of brevet rank when the statute of April 16, 1818, was enacted; that statute does not define its phrase "*having a command according to their brevet ranks*," but it refers to that brevet rank as it was then moulded and shaped by law, and it adopts and enforces the rule that such rank gave to officers no command in their own corps, and so it has been authoritatively declared. Attorney General Berrien, 2 Op. 227, July 18, 1829, says: "The 61st article of the rules and articles of war still excludes the operation of the brevet in the regiment, troop, or company to which the brevetted officer belongs."



It is observable, too, that the act of 1806 was enacted after the Engineer Corps was established ; that its 63d article makes provision and rules for the Engineer Corps, and it cannot be claimed, therefore, that the 61st article of that act was not intended for or did not contemplate the Engineer Corps, which is peculiar in its organization and function ; the Engineer Corps, as much as any other corps, is within the terms and reason of the 61st article ; for the same justice which holds a senior captain in his regiment of infantry to do the duty of its colonel, may hold a colonel of Engineers to do the duty of a general in his own corps.

If the statute of April 10, 1818, referred to brevet rank as it then existed, the phrase "having a command according to their brevet rank" could not include the commands of officers in their own corps, for such commands did not then belong to, and therefore could not be "*according to*" their brevet rank.

Now, all the services of General Macomb, though unquestionably of the highest grade and importance, and of great extent and variety, are yet, as they are stated in the petition and shown in the evidence, directly within and peculiar to the line of his corps and his duty as its chief and colonel. He was, by the statutes of March 16, 1802, and April 29, 1812, the head of the Engineer Corps, and in superintendence of that and the Military Academy and of the bureau at the headquarters of the department, and the Topographical Engineers was a part of his corps, and so specified in general orders, (exhibit B,) and his duties are thus specified in the 67th article of the Army Regulations of 1820, 1821, and 1825, which cover the term of his service :

"1. The chief of the Corps of Engineers shall be stationed at the seat of government, and shall be charged with the superintendence of the Corps of Engineers, to which that of the Topographical Engineers is attached. He shall also be inspector of the Military Academy, and be charged with its correspondence.

"2. The duties of the Engineer Department will comprise the construction and repairs of fortifications and a general superintendence and inspection of the same," &c.

These specifications cover all the services shown in this case, and they show that such services were in the line of the corps of General Macomb, and within the scope of his commission, rank, and command in his own corps. If so, they were not rendered under his brevet rank, for that gave him no command in his own corps.

It is claimed for the petitioner that, as General Macomb was assigned to his command in his capacity and by his title and rank of major general by the authority of the President of the United States, his command was thereby authoritatively declared and made "*according to*" his brevet rank ; but such a command as specified in the statute of April 10, 1818, is a determinate thing and position, fixed by law, and not arbitrary with the President, for, if it were, he would control the statute, and might defeat its purpose. Beside, an officer may be assigned a command less than that of his rank ; a general may command a regiment ; a colonel may command only a battalion. Each will be *on duty* according to his rank, but neither will have a command "*according to*" his rank, in the sense of the statute of 1818.

It is contended for the petitioner that General Macomb, upon the facts stated, exercised a command numerically "*equal to*" his brevet rank, and is therefore entitled to his brevet pay under the statute of 1818, as that was expounded by the Army Regulations of 1820 and 1821 and 1825, &c., in these words: "Brevet officers shall receive the pay and emoluments of their brevet commissions when they exercise command *equal to* their brevet rank: *for example*, a brevet captain must command a company; a brevet major and a brevet lieutenant colonel, a battalion; a brevet colonel, a regiment; a brevet brigadier general, a brigade; a brevet major general, a division." And in the argument it was urged that the words "*equal to*" and "*for example*" show that a major general's command is to be *equivalent* to a division only, and that the word *division* is used not as an absolute requirement, but only as an illustration as to quantity.

But the Army Regulations cannot alter the statute or dispense with any requirement the statute makes. The phrase "*according to their brevet rank*," in the literal meaning of its words, has no reference to numbers, and specifies none. It may include numbers if they are incident to a brevet rank, but it is not satisfied by numbers only if other things besides numbers are incident to such brevet rank; for, "*according to their brevet rank*," of its own force, means according to such rank *in all particulars*, and not in any one particular. If a captain with a brevet of major was in command of his own regiment, his command would be, in numbers, more than "*equal to*" his brevet rank, and exceed the "*example*" given in the Army Regulations; but still it would not be "*according to*" his brevet rank, for such a rank cannot give a command in his own corps, under the statute of 1806, article 61.

Beside, from the nature of the subject-matter and the purpose of the Army Regulations, it may well be assumed that they used the technical words, company, battalion, regiment, brigade, and division, in their technical meaning, and contemplated only organized bodies of soldiers in the application of the words "*equal to*." In reference to such soldiers, the relative duties and responsibilities of officers are fixed by law, and are entirely different from what they are in reference to mechanics and laborers hired and not enlisted; these are not soldiers, and therefore are not in strictness a part of a military command. Their obligation arises on their contract, and is according to that only. There is no law or army regulation apportioning them, in numbers, to different military commands, or furnishing any suggestion or reason that a colonel of engineers may not as well command 5,000 of them on different works as a major general; admitting, therefore, that in the Army Regulations of 1820, 1821, and 1825, &c., the words division, brigade, &c., have reference to numbers, such reference is, I think, to numbers as organized and described under the terms used, and is not to mechanics and laborers hired and not enlisted. I am of opinion, therefore, that General Macomb had not a command "*equal to*" a "*division*," as those words are used in the Army Regulations.

It may be, and undoubtedly is the fact, that mechanics and laborers more frequently and in larger numbers enter into the commands of officers of the engineer and ordnance corps than into the commands

of the officers of other corps of the army. This fact might justify a different provision for the former, but it cannot authorize this court to construe the same words in the laws and army regulations differently for officers of the different corps.

The evidence in this case shows that, by the practice of the department at the time General Macomb was in his command, mechanics and laborers were counted in estimating numerically military commands; that other officers holding brevet commissions and in command in similar circumstances at and about the same time were paid according to their brevet rank; and that of all the major generals brevetted when and for the same meritorious services that he was, he is the only one who has not been paid as a major general.—(A. Secretary Cass' remarks, E F.) These circumstances may make a case of peculiar hardship, but its alleviation does not belong to this court, whose duty it is to declare the law only on the facts it finds.

On the whole case, I am of opinion that the command of General Macomb was not "*according to*" his brevet rank; and that, therefore, he is not entitled to the relief he prays.

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